



# Review Report of Village Courts Legal Framework

**Activating Village Courts in Bangladesh Project**

**Local Government Division**

Ministry of Local Government, Rural Development and Cooperatives  
Government of the People's Republic of Bangladesh



# Review Report on Village Courts Legal Framework

April, 2012

**Author**

**Md. Mahboob Murshed**  
Legal Expert, AVCB Project



European Union

**Activating Village Courts in Bangladesh Project**

Local Government Division  
Ministry of Local Government, Rural Development & Cooperatives  
Government of the People's Republic of Bangladesh



*Empowered lives.  
Resilient nations.*



‘Activating Village Courts in Bangladesh Project’ is being implemented by Local Government Division, Ministry of Local Government, Rural Development and Cooperatives, supported by UNDP Bangladesh and European Union (EU), which strives in strengthening the local justice system through activating Village Courts in selected 350 Union Parishads (UP) in Bangladesh.

## **REVIEW REPORT ON VILLAGE COURTS LEGAL FRAMEWORK**

**April 2012**

**Copyright©AVCB Project, 2012**

**Published by**

**Activating Village Courts in Bangladesh Project**

Local Government Division

Ministry of Local Government, Rural Development and Cooperatives

Government of the People's Republic of Bangladesh

Local Government Division, Ministry of Local Government, Rural Development and Cooperatives hereby extends special gratitude to UNDP Bangladesh and European Union for their continuous support in bringing out this Study Report through the project titled “Activating Village Courts in Bangladesh”



European Union



*Empowered lives.  
Resilient nations.*



## Preface

I am glad to see that under ‘Activating Village Courts in Bangladesh’(AVCB) project, a detail Review has been conducted on the Legal Framework of Village Courts in Bangladesh with a view to make the justice-delivery system more progressive and responsive one to the need of poor people living in the rural Bangladesh. Viewing from historical perspective, Village Courts are functioning in the country since long in different names like Union Courts, Conciliation Courts and finally from 1976 as Village Courts with almost similar jurisdiction of trying petty criminal and civil matters occurred in the rural areas. But the experience reveals that it has never been reasonably effective in rendering justice to the need and expectation of the rural poor. It is encouraging to note that efforts have been made to make a comprehensive analysis of all existing laws related to village justice system in the process of preparing the report.

Being in charge of the implementing Ministry of the AVCB project, I have ensured the detail consultation process during the review with all relevant stake holders so that the report can come up with fruitful recommendations providing a base for the policy makers for making the necessary legal interventions. While covering the legal constraints based on the focus groups discussions with the legal practitioners, I am confident that wide consultation with other citizen groups like civil society, academicians, NGOs, journalists have also been very useful in terms of capturing the socio-economic perspective involved in the process.

The Report has incorporated the village court experience in some other countries like India, Papua New Guinea, Philippines, New York State which is surely a commendable work. Furthermore, I am happy to see that the report has Annexed not only the Village Courts Act, 2006” but also the” Draft Village Courts (Amendment) Bill, 2011” as it will help the readers to see the proposed amendments based on detail consultations.

I am confident that the Report would contribute immensely to update the legal frame work of Village Courts in Bangladesh and would serve as an all-time reference for future users.

**(Abu Alam Md. Shahid Khan)**

Secretary

Local Government Division

## Acknowledgement

Reviewing the legal framework of village courts in Bangladesh was a felt-need for long for making the necessary intervention in the justice delivery system with a view to ensure the poor people's easy access to justice. Recognizing the need for such intervention, the review was integrated as a component in the project design of "Activating Village courts in Bangladesh" (AVCB). I consider this report, based on detail review process, as a notable achievement of the project which would surely contribute in bringing the necessary changes in the justice delivery system of village courts for making it better functional.

While conducting an in-house research for identifying the legal constraints of village courts and thereby search for appropriate measures for addressing such constraints, the project authority also engaged in an extensive consultation process with all relevant stakeholders. A good number of National, Divisional, District, Upazila and Union Parishad level workshop, seminar, Focus Group Discussions were held the recommendation of which have been taken into consideration for giving the report a final shape. It has been revealed from the views obtained during the consultation process that amongst other socio-economic factors, some legal constraints of the Village Court's Legal Framework are also responsible for the present non-functional state of Village Courts, e.g. less pecuniary jurisdiction, absence of alternative dispute resolution in the VC Act, cumbersome process of enforcing VC decision, remote possibility of women participation in the VC as members etc. Such issues have adequately been addressed in the report. I believe the Focus Group Discussions with the law practitioners, policy makers and the Hon'ble Parliamentarians have been extremely useful in developing the recommendations related to required legal interventions. The Report includes a draft amendment Bill on the VC Act, 2006 which would facilitate to make necessary amendments of the Act.

I extend my gratitude to all stakeholders whose valued suggestions and views have helped the project authority in preparing the Report. I also thank the European Commission for providing major financial assistance and UNDP Bangladesh for extending its technical assistance to Local Government Division for implementing the AVCB project. I must convey my thanks to the Project Staff particularly Mr. Md. Mahboob Murshed, Legal Expert of the Project for conducting the research and preparing a very authentic report on Review Report of Village Courts Legal Framework.

Finally, I express my gratitude to the Hon'ble Minister for Local Government, Rural Development and Cooperatives, Hon'ble State Minister and Secretary of Local Government Division for their full-time attention and guidance for carrying out the activities under the Project.



**(K M Mozammel Hoq)**

Additional Secretary

Local Government Division

and

National Project Director

Activating Village Courts in Bangladesh Project

# Table of Contents

---

## **Preface**

## **Acknowledgement**

## **Executive Summery**

## **1 Introduction**

1.1 Objective of the Study .....	13
1.2 Scope of the Work .....	14
1.2.1 Access to Justice .....	14
1.2.2 Separation of Judiciary .....	14
1.2.3 ADR .....	15
1.2.4 Restorative Justice .....	15
1.2.5 Socio Economic Condition .....	16
1.3 Methodology .....	16
1.4 VC is a Quasi Formal Court .....	17
1.5 A Brief Description of the Provisions Relating to VC .....	17

## **2. Legislative History of Local Justice System .....**

2.1 Panchayat System .....	19
2.2 Union Benches .....	19
2.3 Union Courts .....	19
2.4 Conciliation Courts .....	20
2.5 The Village Courts .....	20

## **3. The Legal Framework of VC .....**

3.1. The Salient features of the VC Act and Rules .....	21
3.1.1 Important issues to be considered in determining VC's jurisdiction .....	22
3.1.2 Pre Trial Provisions .....	22
3.1.3 Trial Provisions .....	23
3.1.4 Post Trial Provisions .....	23
3.1.5 Enforcement of Decree .....	23
3.2 Description of the Relevant Provisions of the Penal Code, 1860 .....	24
3.3 Relevant Provisions of other Relevant Laws .....	27
3.3.1 Cattle-trespass Act, 1871(Act no. I of 1871) .....	27
3.3.2 Oaths Act, 1873 (Act no. X of 1873) .....	27
3.3.3 Agricultural Labour (Minimum Wages) Ordinance, 1984 (Ordinance NO. XVII of 1984) .....	28
3.3.4 The Code of Criminal Procedure, 1898 (Act No. V of 1898) .....	29
3.3.5 The Code of Civil Procedure, 1908 (Act NO. V of 1908) .....	29

## **4. International Case Studies .....**

4.1. Gram Nyayalaya of India .....	30
4.2. Village Court of Papua New Guinea .....	31
4.3 Barangay Justice System of Philippines .....	32
4.4 Town and Village Courts of New York State .....	33

## **5. Required Changes in the Legal Framework of VC .....**

35

5.1 Required Changes in the VC Act and other Relevant Laws.....	35
5.1.1 The Village Courts Act, 2006 .....	35
a. Jurisdictional Changes .....	35
b. Constitutional Changes .....	36
c. Required Changes to Incorporate ADR .....	37
d. Required Changes in the Powers of VC .....	37
e. Required Changes Regarding Decision and Appeal .....	38
f. Relevant Changes in the Enforcement of Decision .....	38
g. Required Changes Regarding Transfer of some Cases .....	39
h. Required Changes Regarding Investigation by Police .....	39
i. Required Changes Regarding Power of Exemption .....	39
5.1.2. Changes in the VC Act .....	40
5.1.3 Changes in the light of Access to Justice .....	40
5.1.4 Changes in the context of Separation of Judiciary .....	40
5.1.5 Changes in the light of Alternative Dispute Resolution (ADR) .....	41
5.1.6 Changes to Introduce Restorative Justice Mechanism .....	41
5.1.7 Changes in the Context of Socio-Economic Condition .....	41
5.2 Empowering VC to Try Domestic Violence .....	41
<b>6. Necessary Amendments of the VC Act, 2006 .....</b>	<b>42</b>
6.1 Amendment in the definitions .....	42
6.2 Amendment in section 3 .....	42
6.3 Amendment in section 4 .....	42
6.4 Amendment in the Constitution of VC .....	42
6.5 Amendment to Enhance Power of the Village Court .....	42
6.6 Amendment to incorporate ADR .....	42
6.7 Amendment of Provisions of Decision and Appeal .....	43
6.8 Amendment in Enforcement of Decision of Village Court .....	43
6.9 Amendment in Section 13 of the VC Act .....	44
6.10 Amendment to incorporate limitations in filing cases .....	44
6.11 Amendment of section 16 of the VC Act .....	44
6.12 Amendment of section 17 of the VC Act .....	44
6.13 Amendment of the Schedule .....	44
6.14 Clause on pending cases .....	45
<b>7. Conclusion .....</b>	<b>46</b>
<b>Annexure-A .....</b>	<b>47</b>
Recommendations of the Workshops and FGDs .....	47
Recommendations which might be considered (Important Recommendations): ..	48
Chittagong Divisional Workshop (held on 31 July 2010) .....	48
Recommendations which might be considered (Important Recommendations): ..	49
Moulvibazar Workshop (held on 21 August 2010) .....	50
Recommendations which might be considered (Important Recommendations): ..	50
Kishoregonj Workshop (Held On 28 August 2010) .....	51

Recommendations which might be considered (Important Recommendations): ...	51
Barguna Workshop (held on 4 September 2010) .....	51
Recommendations which might be considered (Important Recommendations): ...	52
Key Recommendations Obtained from the Workshops with Judicial Officers on the Potentials and Reforms of Village Court .....	52
Recommendations of the VC Officials .....	53
Important Recommendations for effective VC obtained from field visits .....	53
Consultative Workshop on the Draft Report of the Review of Legal Framework .....	54
National Technical Consultation on Review Report of Village Courts Legal Framework .	...
54	
National Consultation on the Village Courts Act, 2006: Challenges and Way Forward: .....	55
<b>Annexure-B</b> .....	56
English Version of the Village Courts Act, 2006 .....	56
<b>Annexure-C</b> .....	62
List of Interviewees: .....	62
<b>Annexure-D</b> .....	62
Draft Village Courts (Amendment) Bill, 2011 .....	62
<b>Annexure-E</b> .....	68
Bibliography .....	68



## Abbreviations

ADR	Alternative Disputes Resolution
AVCB	Activating Village Courts in Bangladesh Project
BJS	Barangy Justice System
CJM	Chief Judicial Magistrate
DJ	District Judge
DM	District Magistrate
EU	European Union
FGD	Focus Group Discussion
LGD	Local Government Division
MOLGRD&C	Ministry of Local Government, Rural Development and Cooperatives
NGO	Non-Government Organization
PDR Act	Public Demands Recovery Act, 1913
UNDP	United Nations Development Programme
UNO	Upazila Nirbahi Officer
UP	Union Parishad
UZ	Upazilla Parishad
VC	Village Court
VOM	Victim-Offender Mediation



## Executive Summary

Village Court is the only institution backed by an enacted law to administer justice at the Union level which is the lowest administrative unit of Bangladesh. It has got immense potentiality to render justice at the grass root level to the poor, women, children and disadvantaged people. Formal judiciary is over burdened with backlog of cases. Civil litigation is costly, time consuming and in most cases fruitless and much of the criminal proceedings are frivolous and vexatious. Entire criminal justice administration which includes public prosecutor, police, doctors and criminal courts has substantially lost its effectiveness due to reckless malpractices and corruption. At this backdrop Village Court (VC) as a court of quasi formal nature may play a vital role in administering both criminal and civil justice at the rural area.

The Project ‘Activating Village Courts in Bangladesh’ is implementing its programmes in 350 Union Parishads of 56 Upazilas under 14 districts of 6 divisions in order to make the Village Courts functional and thereby ensuring justice for the poor, women, children and vulnerable groups which would enhance human rights situation in Bangladesh. Local Government Division of the Ministry of Local Government, Rural Development and Cooperatives is implementing the Project while European Commission is providing major financial assistance and UNDP Bangladesh gives both technical and financial assistance to the Project.

Review of legal framework of VC is a very important component of the Project which undertook an in house research initiative to prepare the Report on Review Report of Village Courts Legal Frameworks. It has organized several seminars, workshops, FGDs nationally and at divisional, district and union levels with Members of Parliament, Judges, civil servants, lawyers, legal academia, NGO workers, members of civil society and Village Court’s officials during 2010 and 2011. Several important recommendations on legal reform of VC have been retrieved from these activities. The Report reflects these recommendations and a draft amendment Bill of the Village Courts Act, 2006 has been prepared and annexed with the Report as the gist of the findings.

The Report consists of seven sections, i.e. Introduction, Legislative History of Local Justice System, the Legal Framework of VC, International Case Studies, Required Changes in the Legal Framework of VC, Necessary Amendments of the VC Act, 2006 and Conclusion. The report also includes several annexure covering Recommendations of the Workshops and FGDs, English Version of the Village Courts Act, 2006, List of Interviewees, Draft Village Courts (Amendment) Bill, 2011 and Bibliography.

Section 1-deals with the introductory matters like a brief description of the Project, evolution of the law relating to VC, necessity of changes in the light of separation of judiciary, expeditious disposal of cases by VC and the need to enhance accessibility of poor, vulnerable group to VC etc. It specifically states the objective of the study, scope of the study and explained some terminologies like access to justice, separation of judiciary, ADR, restorative justice, socio-economic condition etc. The introductory section also includes methodology, quasi formal nature of VC and a brief description of the provisions relating to VC.

Section 2- states legislative history of local justice system. This section describes briefly the legal background of local justice system in Bangladesh. Informal justice system of Panchayet was given legal recognition through the Village Chaukidari Act, 1870 (Bengal Act VI of 1870) and thereafter in 1919 Union Courts were established under the Bengal Village Self-Government Act, 1919 to try trifling civil and criminal disputes arose at the jurisdiction of Union Board.

In 1961 Conciliation Courts were established at the Union level under the Conciliation Courts Ordinance, 1961 with almost similar jurisdiction of Union Courts. In 1976 Village Courts were established vide The Village Courts Ordinance, 1976 with pecuniary jurisdiction of TK 2,000 in criminal and civil matters which was enhanced to TK. 5,000 later on. In 2006, The Village Courts Act, 2006 was enacted with no remarkable changes

---

in the Ordinance. It enhances the pecuniary jurisdiction of VC from TK 5,000 to TK 25,000. The other powers and functions of VC almost remain same except the Act curtailed the power of VC to enforce its own decision.

Section 3-reveals about the legal framework of VC. It states the relevant laws and rules relating to VC which include as many as 10 laws and rules including the Village Courts Act, 2006 and the Village Courts Rules, 1976. The salient features of the VC Act and Rules have been stated. Important issues to be considered in determining VC's jurisdiction, pre trial provisions, trial provisions, post trial provisions and enforcement of decision have been briefly discussed. Description of the relevant provisions of the Penal Code, 1860, Cattle-trespass Act, 1871, Oaths Act, 1873, Agricultural Labour (Minimum Wages) Ordinance, 1984, The Code of Criminal Procedure, 1898 and the Code of Civil Procedure, 1908 has been given.

Section 4 depicts some important international case studies on the local justice system. The neighbour country India has recently passed Gram Nyayalaya Act, 2008 and established 5,000 (five thousand) Gram Nyayalaya at every Panchayet headed by a Nayadhikari eligible to be appointed as a Judicial Magistrate of first class having some criminal and civil jurisdictions. Village Court of Papua New Guinea is also a recent model of local justice and stated here in a nut-shell. A brief idea has been given on the Barangay Justice System of Philippines and Town and Village Courts of New York State.

Section 5 narrates required changes in the legal framework of VC. The changes have been considered from the perspectives of access to justice, separation of judiciary, ADR, restorative justice, socio-economic condition and domestic violence. Issues of jurisdictional change, constitutional change, incorporation of ADR, changes in powers of VC, decision and appeal, enforcement of decision, transfer of cases, investigation by police and power of exemption.

Section 6 deals with necessary amendments of the VC Act, 2006. Specific amendments have been suggested in the VC Act in the following aspects:

- i. Definition Clause- The Local Government (Union Parishad) Act, 2009 is substituted for the Ordinance of 1983 and some necessary definitions have been inserted;
- ii. Language of section 3 has been clarified, time limit has been imposed for disposal of a revision, woman representation has been ensured where interest of woman or a child is involved with any party to a dispute and provision of return of petition in case of failure of nomination of member of VC by any party to the dispute has been provided;
- iii. Enhancement of pecuniary jurisdiction from TK. 25,000/ to TK. 50,000/ is provided;
- iv. Provision for options to be chosen by the parties between trial or mediation, time limit has been imposed for trial and mediation, VC is to be dissolved where the mediation is failed or trial is not concluded within time limit and in such cases parties have been given liberty to prefer the dispute before the proper court ;
- v. Provisions for casting vote of Chairman is provided in case of a tie where there are four members and a confusion in section 13(3) has been removed by specifying the application of the provision to criminal cases;
- vi. Stay of and res judicata provisions of the Code of Civil Procedure have been made enforceable in the VC civil cases;
- vii. VC is empowered to realize the compensation imposed by it;
- viii. Power of transfer of criminal case is vested on CJM and civil case is vested on DJ;
- ix. Unfettered power of police to investigate VC triable criminal cases has been made restricted;
- x. The provisions of the sections of the Penal Code have been stated in Bangla at the first part of the Schedule of the VC Act and the provisions of the Cattle -Trespass Act, 1871 have been omitted; and
- xi. Limitation for filing VC cases has been provided.

---

Section 7 gives conclusion of the Report. Some short term recommendations and long term recommendations have been offered here. Short term recommendations include:

1. The framing of Village Courts Rules under the VC Act, 2006;
2. The amendment of section 2 of the Act;
3. The amendment of section 9 of the VC Act;
4. The amendment of section 13 of the Act; and
5. The amendment of section 16 of the Act.

The long term recommendations are:

1. The framing of new Rules as per the amended VC Act as per the recommendations;
2. The amendment to incorporate ADR;
3. The amendment to incorporate VOM;
4. The amendment to enhance power of VC;
5. The amendment to prevent police from investigating cases related to first part of the schedule;
6. The amendment of section 19 of the Act;
7. The incorporation of the offences stated in first part of the schedule and civil cases in the second part of the schedule in the body of the Act; and
8. The amendment of the schedule.

# 1 Introduction

Activating Village Courts in Bangladesh Project has been launched to provide support to justice system through activating village courts in 350 selected Union Parishads (UP) of the country. The Project is being implemented by the Local Government Division of the Ministry of Local Government, Rural Development and Cooperatives (MLGRD&C). UNDP, Bangladesh extends both technical and financial support while the European Union is providing major financial assistance with a contribution of Government of Bangladesh to the Project.

Among the four components of the Project the component ‘Review of Legal Framework’ is immensely important and engaged in reviewing legal framework of the Village Courts with a view to propose necessary amendments to the relevant laws and draft rules under the Village Courts Act, 2006.

Village Court is the lowest judicial tier in the judicial hierarchy of Bangladesh. When formal judicial system is over burdened with pending cases and access to justice for poor, vulnerable group, particularly women has become very limited and the expensive and cumbersome process of formal judiciary detract people from seeking redress for the wrong committed on them in such a circumstances the village court can play a significant role in 4500 Union Parishads to establish justice at grass root level.

The concept of village court is not new in our judicial system. In 1919 Union Courts were established to try small civil and criminal cases and the Chairman of Union Board was entrusted with the function of the Union Court. In 1961 Conciliation Courts were provided by the Conciliation Courts Ordinance, 1961 under the auspicious of the Union Council with almost same jurisdiction of the Union Court putting emphasis on conciliation rather inflicting sentence or penalizing the offender. In 1976 the Village Courts were set-up through promulgation of the Village Courts Ordinance, 1976. This ordinance was enforced till 2006 and in 2006 the Village Courts Act was enacted with only one noteworthy empowerment i.e. enhancement of the pecuniary jurisdiction of Village Court from TK 5000/- to TK. 25000/-. But the Rules framed under the Ordinance in 1976 have not been replaced till today. Framing of new rules under the Village Courts Act, 2006 has become long overdue.

In the mean while a major breakthrough took place in the judicial system of Bangladesh i.e. separation of Judiciary from the executive and Judicial Magistracy has been established. Such change in the judicial system also summons change in the legal framework of the Village Court. Moreover, alternative dispute resolution concept (ADR) is becoming popular day by day and shows its effectiveness throughout the world. Therefore, the Village Court legal framework requires change to adopt the ADR in order to make Village Court (VC) more worthy and fit to administer restorative justice at grass root level. In the changed socio-economic condition both pecuniary and subject matter jurisdiction of VC needed to be reviewed.

The expeditious disposal of cases by VC must be ensured in order to enhance people’s confidence and ensure the credibility of VC. The issue of amalgamating the functions of Arbitration Council with VC should be considered meticulously. The incorporation of shalish (village informal arbitration) in the VC Act is another important matter needed to be given due importance. Providing appropriate mechanism of enforcing modern restorative justice in the Act is another great challenge. Smooth and timely enforcement of VC decision is an important issue which requires due consideration. Above all what changes should be brought in the VC legal framework in order to make village court more accessible to the poor, vulnerable group as well as women and children is highly important to assess and needed appropriate attention. These matters and issues would be duly addressed and considered in the report.

## 1.1 Objective of the Review

The main objective of the task is to review the entire legal framework of the Village Courts and propose necessary amendments to the Village Courts Act, 2006 in order to make the village courts functional and thereby ensuring local justice and enhancing human rights situation in Bangladesh.

---

## 1.2 Scope of the Work

In reviewing the entire legal framework of the VC the following issues have been considered with due importance:

- i. Access to Justice;
- ii. Separation of Judiciary;
- iii. Alternative Dispute Resolution;
- iv. Restorative Justice;
- v. Socio-economic condition; and
- vi. Domestic Violence.

### 1.2.1 Access to Justice

Access to justice in a plain language can be described as a possibility to get justice. An effective judicial system can be determined by its easy accessibility to common people, particularly to women, children and disadvantaged people of the society. The Universal Declaration of Human Rights deals with access to justice in Articles 7-11 where it has declared that everyone is equal before law and has a right to get equal protection of law, everyone has a right to an effective remedy by a competent tribunal, no one shall be subjected to arrest detention etc., everyone is entitled to a fair and public hearing and everyone has a right to be presumed innocent until proved guilty according to law.

The Constitution of the People's Republic of Bangladesh provides the provisions of access to justice as fundamental rights in Articles 31, 32, 33 and 35. Where it has provided that right to protection of law, protection of right to life and personal liberty, safeguards as to arrest and detention and protection in respect of trial and punishment as the fundamental rights of every citizen or person. The right to move the High Court Division to enforce the fundamental rights is also declared as fundamental rights in the Constitution.<sup>1</sup>

The UNDP has got its own standard to assess the access to justice of a particular judicial system. UNDP determines 5 operational aspects of access to justice which are as follows:

- i. Legal Protection;
- ii. Legal Awareness;
- iii. Legal Aid and Counsel;
- iv. Adjudication; and
- v. Enforcement.<sup>2</sup>

### 1.2.2 Separation of Judiciary

Judicial Magistracy has been separated from the Executive with effect from 1 November 2007. The separation was made effective by promulgating Ordinance no. 2 of 2007 and subsequently it was enforced vide gazette notification dated 9 October of 2007. Due to the separation of Judicial Magistracy some consequential amendments in the Village Courts Act, 2006 and the Village Courts Rules, 1976 have become incumbent. Because Deputy Commissioners cannot exercise any judicial function as the District Magistrates after Separation of Judiciary. They can exercise only functions of executive nature under the Code of Criminal Procedure, 1898.

On the other hand the Chief Judicial Magistrates are entrusted with all the judicial functions enshrined in the Code of Criminal Procedure, 1898. But this position as well as the posts of Judicial Magistrates was not in existence at the time of enactment of the Village Courts Act, 2006. Therefore, relevant change in the light of Separation of Judiciary should be brought to the legal framework of the Village Courts.

---

<sup>1</sup> See article 44 of the Constitution of the People's Republic of Bangladesh.

<sup>2</sup> See "Access to Justice" Practice Note, UNDP publication, dated 9-03-2004.

---

### 1.2.3 ADR

ADR means alternative dispute resolution. Basically through ADR disputes are being resolved between the parties outside the court though initially those are brought before the court for judicial settlement. In Bangladesh ADR has been formally adopted in sections 89A, 89 B and 89 C in the Code of Civil Procedure, 1908 for resolving civil disputes. It is also incorporated in the Loan Recovery Act, 2003 to resolve the money related disputes of the financial institutions and in the Family Courts Ordinance, 1985 to resolve the family disputes. In order to resolve the labour related disputes ADR has been adopted in the Labour Code, 2006.

Apart from these, section 345 of the Code of Criminal Procedure, 1898 provides for compounding minor criminal offences. Dispute Resolution (Municipal Area) Board Act, 2004 and Village Courts, Act, 2006 were also enacted to resolve minor offences and disputes in town area and village area respectively largely in an informal and conciliatory form.

ADR has been both; increasingly used alongside, and integrated formally, into legal systems internationally in order to capitalize on the typical advantages of ADR over litigation:

- Suitability for multi-party disputes;
- Flexibility of procedure - the process is determined and controlled by the parties of the dispute;
- Lower costs;
- Less complexity (“less is more”);
- Parties choice of neutral third party (and therefore expertise in area of dispute) to direct negotiations/ adjudicate;
- Likelihood and speed of settlements;
- Practical solutions tailored to parties’ interests and needs (not rights and wants, as they may perceive them);
- Confidentiality; and,
- The preservation of relationships and the preservation of reputations.<sup>3</sup>

### 1.2.4 Restorative Justice

**Restorative justice** (also sometimes called “reparative justice” is an approach to justice that focuses on the needs of victims and offenders, instead of the need to satisfy the abstract principles of law or the need of the community to exact punishment. Victims are given an active role in a dispute and offenders are encouraged to take responsibility for their actions, “to repair the harm they’ve done- by apologizing, returning stolen money, or (for example) doing community service”.

It is based on a theory of justice that focuses on crime and wrong doing as acted against the individual or community rather than the state. Restorative Justice can involve a fostering of dialog between the offender and the victim show the highest rates of victim satisfaction, true accountability by the offender, and reduced recidivism (repeat offences).<sup>4</sup>

**Restorative justice principles** offer more inclusive processes and reorient the goals of justice. Restorative justice has been finding a receptive audience, as it creates common ground which accommodates the goals of

---

<sup>3</sup>“What Is ADR?”, Business and Society Exploring Solutions wiki, [BASESwiki.org](http://BASESwiki.org) , last visited on 29 December 2010.

<sup>4</sup> See Marty Price, J.D. “Personalizing Crime,” Dispute Resolution Magazine. Fall 2001



---

many constituencies and provides a collective focus. The guiding principles of restorative justice are<sup>5</sup>:

1. Crime is an offense against human relationships.
2. The first priority of justice processes is to assist victims.
3. The second priority is to restore the community, to the degree possible.
4. The offender has personal responsibility to victims and to the community for crimes committed.
5. Stakeholders share responsibilities for restorative justice through partnerships for action.
6. The offender will develop improved competency and understanding as a result of the restorative justice experience.

All restorative justice programs have some common elements. They seek healing, forgiveness and active community involvement. The programs can take place at different times after a crime has occurred - sometimes after charges have been laid; sometimes after an accused has been found guilty of an offence.

Some examples of restorative justice programs include:

- victim offender mediation;
- family group conferencing;
- sentencing circles;
- consensus-based decision-making on the sentence; and
- Victim offender reconciliation panels.<sup>6</sup>

### **1.2.5 Socio Economic Condition**

In order to bring effective changes in the legal framework of the Village Court (VC) consideration of socio economic condition of the present is a very important issue. It is already stated that the pecuniary jurisdiction of the VC is only 25000/BDT which seems to be very low in consideration of the present socio economic condition of the rural area. Because of price hike of consumer items as well as tremendous rise of the valuation of land the amount has become inadequate substantially. The nature of disputes has also become changed due to the change of the social norms and values in the rural areas. All prevailing socio-economic issues should be duly considered in making any law or amending any law to reform a legal framework.

## **1.3 Methodology**

Both primary and secondary sources have been used in order to conduct the study. Bangladesh Code, gazette notifications, interviews, recommendations obtained from workshops, FGDs, field visits have been used as primary sources while books, journals, articles, and national and international web sites have been used as secondary sources. The list of the documents reviewed is annexed with the report. The texts of relevant laws have been examined from the Bangladesh Code. In order to find out the required changes in the legal framework of VC the framework has been studied extensively and examples of home and abroad have been carefully considered.

Several workshops, focus group discussions with Judges of Subordinate Judiciary, Advocates, VC Officials and other government officials including officers belong to administration and police were conducted. Recommendations retrieved from these workshops and FGDs have been carefully scrutinized and reported. As many as 22 Union Parishads of 9 Districts in 5 Divisions were visited where the activities of the VC including live trials have been observed and practical limitations of both social and legal have been ascertained. The recommendations are annexed with the report. On the basis of the examination of relevant laws, literature review and recommendations obtained as aforesaid necessary places of amendments in the VC Act, 2006 have been ascertained and accordingly a draft Bill on the amendments of Village Courts Act, 2006 has been drafted and annexed with the report.

---

<sup>5</sup>See H:\Restorative Justice\Restorative Justice National Institute of Justice.mht, hosted by National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531, last visited on 29 December 2010.

<sup>6</sup>supra



---

## 1.4 VC is a Quasi Formal Court

Although VC is provided by an Act of Parliament but the very Act maximizes the informal nature of the VC. The provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898 have been made inapplicable subject to otherwise provided in the Act and the provisions of the Evidence Act, 1872 are also made inapplicable in VC proceedings.

The Advocate's participation in the VC proceedings has been prohibited. The VC cannot punish the offender by inflicting sentence or fine. It can only award compensation in appropriate cases and fine the contemnor and the person who willfully disregards its summons. But it cannot recover the fine and it must send the matter of recovery of fine to the concerned Judicial Magistrate. All these elements make the VC more informal rather than formal within the ambit of an enacted law. The challenge is to ensure restorative justice in keeping the highest informal nature of VC as far as practicable.

## 1.5 A Brief Description of the Provisions Relating to VC

The Village Courts Act, 2006 consists of 21 sections and one schedule having two parts. The first part of the schedule mentions criminal cases to be tried by the VC and the second part of the Schedule mentions civil cases to be tried by the VC. The Act is an admixture of substantive as well as procedural law and intended to be exhaustive in nature. The Act overrides the Code of Criminal Procedure and Civil Procedure in case of determining the jurisdiction of VC. It has been stated in section 3 of the Act that unless otherwise provided in the Act the cases mentioned in the first part and second part of the Schedule shall be exclusively triable in the VC and no criminal court or civil court as the case may be shall have jurisdiction to try such cases.

The cases triable under this Act at VC is to be initiated by filing a petition by an aggrieved party to the Chairman of the concerned Union Parishad and it is the Chairman who is to determine the maintainability of the petition. For criminal case a fee of TK 2 is to be deposited and for civil case a fee of TK 4 is to be submitted. If the Chairman rejects the petition then the aggrieved party can prefer a revision before the concerned Assistant Judge Court who can in a fit case direct the Chairman to accept the petition and constitute VC and try the case. If the Chairman accepts the petition in that case he would cause the petition to be entered into a register and order both the party to appear on a date fixed by the Chairman and issue summons to the respondent to appear on that date and on service of summons on the respondent the Chairman shall ask the parties to nominate their members within 7 days and the VC shall be constituted with the members so nominated.

It is to be noted that each party must nominate 2 members one of whom must be a UP Member. Therefore, the VC consists of 5 members i.e. one Chairman and 4 members. There is a provision in rule 33 of the Village Courts Rules, 1976 that on appearance of the respondent on getting summons or otherwise if he admits the claim of the petitioner and satisfies the claim in presence of the Chairman then the VC shall not be constituted. This is the only prescribed scope of ADR in the VC legal framework. On constitution of the VC the VC shall give an opportunity to the respondent to file a written objection within 3 days and shall fix the date, time and venue for the session of the Court and shall give direction to the parties to submit necessary evidence in support of their case.

On the day fixed for trial the Court shall try the case and for sufficient cause may adjourn the trial. But in no case the period of adjournment shall not be more than 7 days. If the petitioner failed to appear before the Court on the date fixed for trial which seems to the Chairman that he is reluctant in conducting the case in that case the Court may dismiss the petition for the default of the petitioner. The petitioner may get his petition restored on showing sufficient cause by a written petition submitted within 10 days from the date of dismissal.

If the respondent failed to appear before the Court on the day fixed for trial which seems to the Chairman that he is neglecting in that case the case shall be disposed of in his absence. He can also get his petition restored in the same manner that of the petitioner. The pecuniary jurisdiction of VC for both criminal and civil cases is 25000/ BDT and the territorial jurisdiction is the respective Union where both the parties reside or the cause of action arose.

---

The VC cannot inflict any sentence mentioned in the concerned section of the Penal Code or Cattle Trespass Act as stated in the first part of the Schedule. It also cannot inflict any fine except for defiance of summons and contempt of VC. It can only award compensation up to 25000/ BDT or pronounce order to return the property to the real owner or restore the possession in an appropriate case. The decision of the Court shall be declared in open court and recorded in the case register where the ratio of the majority of the Vote or if the decision is unanimous should be mentioned.

Appeal lies only in case of a decision taken in 3:2 majority of vote and for criminal case appeal lies to the Magistrate of First Class having jurisdiction and for civil case the appeal lies to the Court of Assistant Judge having jurisdiction. If the compensation awarded by a VC is not paid within 6 months in that case the Chairman of VC shall cause to recover the same as arrear tax of the Union Parishad under the Public Demands Recovery Act, 1913 and pay the aggrieved party.

For the claims to be satisfied otherwise than by way of compensation than the matter should be sent to the Assistant Judge having jurisdiction and he shall cause to execute the same as if the decision has been pronounced by his Court. For summoning witnesses and production of documents the VC is empowered like a civil court under the Code of Civil Procedure, 1908. The parties are not allowed to engage an Advocate for conducting a case before the VC.

The District Magistrate and now it is the Chief Judicial Magistrate<sup>7</sup> can transfer a case for public interest and for the interest of justice from village court to a criminal court. The VC can forward a case to the criminal court where it seems to the VC that for interest of justice the accused should be punished. The police can investigate a cognizable offence falls in the first part of the Schedule. But if such case is brought to any criminal court than if such court finds it appropriate it can send the case to VC duly constituted under the Act. The Government may, by notification in the official Gazette, exempt any area or areas, or any case or class of cases, or any community from the operation of all or any of the provisions of the Act. The Government is empowered to frame rules under the Act.

---

<sup>7</sup>After separation of Judicial Magistracy from the Executive it is the Chief Judicial Magistrate by implication of Law has been vested with the power. Section 16 of the Village Courts Act, 2006 is to be read with section 4A (2)(a) of the Code of Criminal Procedure, 1898.

## 2 Legislative History of Local Justice System

The local justice system of Bangladesh was basically based on informal dispute resolution institution known as Panchayat. It was an age old institution which successfully resolved disputes in the rural Bengal from time immemorial. For the first time during the British Period formal recognition was given to the Panchayat through the Village Chaukidari Act, 1870 (Bengal Act VI of 1870).

In 1919 the Union Courts were established through the Bengal Village Self-Government Act, 1919 (Bengal Act V of 1919) which provides for the trial of some petty criminal and civil matters. The Conciliation Courts were established under the Conciliation Courts Ordinance, 1961 with almost similar functions of Union Courts. The Village Courts were established in 1976 under the Village Courts Ordinance, 1976 with a little enhanced criminal and civil jurisdictions and powers. In 2006 the Village Courts Act was enacted with one visible major change i.e. enhancement of pecuniary jurisdiction and power of Village Courts to 25,000/ TK.

### 2.1 Panchayat System

Panchayat system was introduced in the then British Bengal formally through The Village Chaukidari Act, 1870. The District Magistrate was to appoint not less than three or more than five residents in any village within the district to be the panchayat thereof.<sup>8</sup> Every member of Panchayat such appointed was to be appointed for the term of three years.<sup>9</sup> The main function of the Panchayat was to appoint chaukidars subject to the approval of the District Magistrate. This Panchayat though not formally awarded any judicial function but as age old practice prevailing from time immemorial besides its duty of appointing Chaukidars and collecting rents for the salary and equipments of the Chaukidars the Panchayat settled disputes informally in the village area.

### 2.2 Union Benches

The Provincial Government was empowered to appoint two or more members of the Union Board as Union Bench<sup>10</sup> which was empowered to try some minor offences stated in the schedule IV of the Bengal Village Self-Government Act, 1919. The Union Bench could try offences amongst other under sections 24, 26 and 27 of the Cattle-trespass Act, 1871, under section 34 of the Police Act, 1861, sections 160, 178, 179, 269, 277, 289, 290, 294, 323, 334, 341, 352, 358, 426, 447, 448, 504 and 510 of the Indian Penal Code, and when the value of the property in the opinion of the union bench is not over twenty rupees, sections 379 and 411.<sup>11</sup>

A Union Bench could impose fine not exceeding twenty-five rupees or in default to imprisonment for a period not exceeding seven days. Provincial Government could direct that any Union Bench might convict to pay a fine not exceeding fifty rupees or in default to imprisonment for a period not exceeding fourteen days.

### 2.3 Union Courts

The Union Courts were established through the Bengal Village Self-Government Act, 1919 (Bengal Act V of 1919). Two or three Union Board Members were to be appointed by the Provincial Government to function as a Union Court. Such Courts had concurrent jurisdiction to try the following classes of suits, namely:

- (a) suits for money due to contract;
- (b) suits for the recovery of movable property or the value of such property;
- (c) suits for compensation for wrongfully taking or injuring movable property, and
- (d) suits for damages

when the value of the suit does not exceed two hundred rupees.<sup>12</sup>

<sup>8</sup>See section 3 of the Village Chaukidari Act, 1870 (Bengal Act VI of 1870).

<sup>9</sup>Section 9 *ibid*.

<sup>10</sup>See section 65 of the Bengal Village Self-Government Act, 1919 (Bengal Act V of 1919).

<sup>11</sup>Schedule IV *ibid*.

<sup>12</sup>See section 74 *ibid*.

---

## 2.4 Conciliation Courts

Conciliation Courts were established through the Conciliation Courts Ordinance, 1961 (Ordinance No. XLIV of 1961)<sup>13</sup> with the object to settle certain disputes through conciliation. The Conciliation Courts had jurisdiction over the criminal and civil cases stated in part I of the Schedule of the Ordinance while regarding the criminal and civil cases stated in part II of the Schedule, the cases may be referred when both the parties of such disputes agreed to such reference.

As for example reference was compulsory for criminal cases like offences under sections 323, 426, 447, 334, 341, 342, 452, 358, 426, 447, 506 (first part), 508, 509 and 510 of the Penal Code, sections 403, 406, 417 and 420 of the Penal Code when the amount relating to offence did not exceed one hundred rupees etc.

Similarly reference was compulsory in civil cases like suit for the recovery of money due on contracts, receipts or other documents, suit for recovery of movable property, or for the value thereof, suit for damages by cattle trespass etc. and the valuation of such cases varies.

For the civil cases of Union Councils the valuation was five hundred rupees and for the civil cases of Union and Town Committees the valuation was one thousand rupees. The examples of the criminal cases depends on the consent of the parties for referral were cases under sections 324, 343, 355, 357, 427, 430, 448, 461, 498, 500, 501 and 502 of the Penal Code. The examples of the civil cases referral of which depends on the consent of the parties were civil cases (excepting those mentioned in section B of Part I of the Schedule) in which the valuation does not exceed ten thousand rupees.

The territorial jurisdiction of the Conciliation Court was the Union Council, Union Committee and Town Committee. The Conciliation Court could award compensation in criminal cases except cases under sections 428 and 429 of the Penal Code not exceeding two hundred and fifty rupees and in cases under section 428 and 429 not exceeding five hundred rupees. In case of civil cases the conciliation court might order for payment of money in some cases up to 500 rupees and in some cases up to 1000 rupees or delivery of property to the person entitled thereto.<sup>14</sup>

## 2.5 The Village Courts

The village court by its name was established in 1976 under the Village Courts Ordinance, 1976 (Ordinance No. LXI of 1976). The Village Court was to be constituted of a Chairman and two members to be nominated by each of the parties to the dispute among whom one must be a member of the Union Parishad concerned. The Chairman of the Union Parishad should be the Chairman of the Village Court. Under the Ordinance no application can be made against a person of unsound mind.<sup>15</sup> It could award compensation not exceeding one thousand TK. It has got jurisdiction to try minor criminal and civil cases.

In criminal cases valuation of the case varies between 500 TK-1000TK depending on the nature of case. As for example for theft case the valuation of the property involved should not exceed one thousand TK. In civil cases the valuation was 1000/ TK. For disobeying summons it could impose fine not exceeding twenty-five TK and for contempt of Village Court it could impose fine not exceeding fifty TK.<sup>16</sup> The Village Court was empowered to recover the compensation imposed by it through the Union Parishad under the Local Government Ordinance, 1976 as tax levied by the Union Parishad and no certificate case was needed to be filed like the present Village Court needs under the Village Courts Act, 2006.<sup>17</sup>

The Village Courts Ordinance, 1976 was subsequently amended through the Village Courts (Amendment) Ordinance, 1978 (Ordinance No. VIII. Of 1978) and the Village Courts (Amendment) Ordinance, 1979 (Ordinance No. IV of 1979). Three major changes brought by the Ordinance No. IV of 1979 which are as follows:

1. The VC was empowered to recover the compensation awarded by it through Union Parishad;
2. The VC could recover fine imposed by it for disobeying summons and its contempt as a tax levied by the Union Parishad; and

---

<sup>13</sup>The Ordinance was came into force on the 1<sup>st</sup> day of March, 1962, see Gaz. of P., Ext., P. 234c.

<sup>14</sup>See section 7 of the Conciliation Courts Ordinance, 1961 (Ordinance No. XLIV of 1961).

<sup>15</sup>See section 4 of the Village Courts Ordinance, 1976 (Ordinance No. LXI of 1976).

<sup>16</sup>Twenty-five taka was enhanced to two hundred and fifty taka and fifty taka was enhanced to five hundred taka by the Village Courts (Amendment) Ordinance, 1979 (Ordinance No. IV of 1979).

<sup>17</sup>See section 4 of the Village Courts (Amendment) Ordinance, 1979 (Ordinance No. IV of 1979).

3. The jurisdiction and power of Village Courts were en...

## 3 The Legal Framework of VC

The legal framework of VC basically comprises the following laws:

- i. The Village Courts Act, 2006;
- ii. The Penal Code, 1860(Act no. XLV of 1860) e.g. sections 141,143, 147, 160, 323, 334,341,342,352,358,379, 380,381,403,406,417, 420, 427, 428, 429, 504, 506, 508, 509 and 510;
- iii. The Cattle-Trespass Act, 1871 (Act no. 1 of 1871) e.g. sections 24, 26 and 27;
- iv. The Oaths Act, 1873 (Act no. x of 1873)e.g. sections 8,9,10 and 11;
- v. The Code of Civil Procedure, 1908;
- vi. The Local Government (Union Parishads) Act, 2009(Act no. LXI of 2009);
- vii. The Code of Criminal Procedure, 1898 (Act no. V of 1898);
- viii. The Public Demands Recovery Act, 1913 (Act No. III of 1913);
- ix. The Agricultural Labour (Minimum Wages) Ordinance, 1984 (Ordinance No. XVII of 1984); and
- x. The Village Courts Rules, 1976.

### 3.1 The salient features of the VC Act and Rules

The Village Courts Act, 2006 is the basic law which creates the VC and it determines the Jurisdiction, constitution, power, procedure of trial, decision, enforcement of decision, appeal and revision etc. The Schedule of the VC Act has two parts. First part describes the criminal cases and the second part describes the civil cases. The cases stated in the Schedule is exclusively triable by a VC and no other Criminal or Civil Court take cognizance or try such cases except otherwise stated in the Act.<sup>18</sup>

Following criminal cases can be tried by a VC<sup>19</sup>:

1. Sections 143 and 147 of the Penal Code read with the Third or the Fourth clause of section 141 of the Code, when the common object of the unlawful assembly is to commit an offence under sec. 323 or 426 or 447 of that Code, and when not more than ten persons are involved in the unlawful assembly.
2. Sections 160, 334, 341, 342, 352, 358, 504, 506 (first part), 508,509 and 510 of the Penal Code
3. Sections 379, 380 and 381 of the Penal Code when the crime against the cattle and the value involves does not exceed twenty five thousand taka.
4. Sections 379, 380 and 381 of the Penal Code when the crime against any other property other than the cattle and the value of property involved does not exceed twenty five thousand taka.
5. Sections 403, 406, 417 and 420 of the penal Code when the amount in respect of which the offence is committed does not exceed twenty five thousand taka.
6. Section 427 of the Penal Code when the value of the property involved does not exceed twenty five thousand taka.
7. Sections 428 and 429 of the Penal Code when the value of the animal does not exceed twenty five thousand taka.

<sup>18</sup>See section 3 (1) of the Village Courts Act, 2006.

<sup>19</sup>Part one of the Schedule of the Village Courts Act, 2006.

- 
8. Sections 24, 26 and 27 of the Cattle-trespass Act, 1871 (Act. No. 1 of 1871).
  9. Attempts to commit or the abetment of the commission of any of the above offences.

Following Civil cases can be tried by a VC<sup>20</sup>:

1. Suit for the recovery of money on due contracts, receipts or other documents.
2. Suit for the recovery of movable property, or for the value thereof.
3. Suit for the recovery of possession of immovable property within one year of dispossession.
4. Suit for compensation for wrongfully taking or damaging movable property.
5. Suit for damages by cattle trespass.
6. Suit for payable wages of the farmer and recovery of compensation.

When the amount claimed or the price of movable property or the value of immovable property involved does not exceed twenty five thousand taka.

### 3.1.1 Important issues to be considered in determining VC's jurisdiction

The following issues are very important in determining the VC's jurisdiction:

- i. A village Court shall not try a case relating to an offence specified in Part I of the Schedule if the accused had previously been convicted of a cognizable offence or a case relating to any matter specified in Part II of the Schedule if—
  - (a) The interest of a minor is involved in the case;
  - (b) Provision for arbitration has been made in a contract between the parties to the dispute;
  - (c) The Government or a local authority or a public servant acting in the discharge of his duty is a party to the dispute.<sup>21</sup>
- ii. The provisions of sub-section (1) of section 3 of the Village Courts Act, 2006 shall not apply to a suit or proceeding to establish a title to any immovable property in respect of which an order for delivery of possession has been made by a Village Court or to recover possession thereof.<sup>22</sup>
- iii. A Village Court cannot inflict any sentence of imprisonment or impose any fine as provided in the sections of the Penal Code, 1860 or the Cattle Trespass Act, 1871 except imposing fine for defiance of summons and contempt of VC.
- iv. A Village Court can only award compensation up to 25000/BDT in a criminal case and either award compensation up to 25000/BDT or pass a decree to restore possession or return the property to a real owner in a civil case.<sup>23</sup>

### 3.1.2 Pre Trial Provisions

- A party to the dispute should apply to the Chairman UP Concerned for the Constitution of a VC (Section 4 of the VC Act);
- An application under subsection (1) of section 4 shall be in writing and shall be signed by the petitioner and shall be presented to the Chairman of the UP (Rule 3 of The VC Rules, 1976);
- An application shall be accompanied by a fee of Taka two for criminal case and taka four for civil case (Rule 3);

---

<sup>20</sup>Part 2 of the Schedule of the Village Courts Act, 2006.

<sup>21</sup>Section 3 (2) of the Village Courts Act, 2006.

<sup>22</sup>Section 3 (3) of the Village Courts Act, 2006.

<sup>23</sup>See section 7 of the Village Courts Act, 2006.



- If the application is rejected the aggrieved person may prefer a revision before the Assistant Judge within the period of 30 days from the date of rejection (section 4 and rule 5);
- If the order passed by the Chairman is found mala fide or substantially unjust the Assistant Judge shall return the application to the petitioner together with the order to admit the application (Rule 6);
- The application shall be registered on admission (Rule 7);
- Summons to be issued for the appearance of the respondent before the UP Chairman on the date and time fixed therein ( Rule 8);
- When the respondent appears and admits the claim or dispute and satisfies the claim, no VC shall be constituted(Rule 33)
- On Service of Summons the Chairman of the UP shall ask the parties to nominate their members within seven days and on getting nomination the Chairman shall constitute the VC( Rule 10) ;
- After constitution of the VC the Chairman shall ask the respondent to submit the WO within a period of three days and fix the day, time and place where the VC shall sit and may direct the parties to produce necessary evidence.

### **3.1.3 Trial Provisions**

- The VC shall try the case on the day fixed under rule 13 and may adjourn the hearing from time to time for a period not exceeding seven days at a time.
- The application shall be dismissed in case of non appearance of the applicant due to his negligence ( Rule 15);
- The case shall be heard and decided ex parte if the respondent fails to appear due to his negligence ( Rule 16);
- The decision of the VC shall be recorded by the Chairman of the VC in the register in form no. I and every such decision shall indicate whether the decision is unanimous , and if not , the ratio of the majority (Rule 17);
- Every decision of the VC shall be pronounced in open court by the Chairman of the VC (Rule 18);
- After the decision of every case a decree shall be drawn in Form IV which shall be signed by the Chairman of the VC

### **3.1.4 Post Trial Provisions**

- For decision by a majority of three to two (3:2) appeal lies to the Magistrate of first class in criminal matter and to the Assistant Judge in civil matter (Section 8 and Rule 19);
- The Magistrate or the Assistant Judge in case of failure of justice may set aside or modify the decision of the VC or refer back the dispute to the VC for reconsideration.

### **3.1.5 Enforcement of Decree**

- Where the decreed amount is to be recovered under sub section (3) of section 9 , the Chairman of the VC shall send the particulars in form VIII to the UNO for recovery of the same as arrears of revenue of Union Parishad [Section 9 (3)].
- Any member or officer of the UP empowered in this regard in order to recover the decreed amount may confiscate and disposed of any movables of the judgment debtor [section 68 (3) of the Local Government (Union Parishad) Act, 2009] (Suggested but in existing provision PDR Act is to be followed)
- The Govt. may empower any UP to attach any immovable or movable property of the person concerned in order to recover the decreed amount [section 68 (4) of the Local Government (Union Parishad) Act, 2009] (Suggested)
- The decreed/ compensation amount shall be paid within the time fixed by the VC and in no case the period shall exceed more than six months from the date of final order (Rule 22).
- Where the Village Court or the Chairman of the Union Parishad receives any amount payable to a party such amount shall be paid to the party as far as may be, within seven days of his applying thereof.

---

## 3.2 Description of the Relevant Provisions of the Penal Code, 1860

### Unlawful assembly

141. An assembly of five or more persons is designated an “unlawful assembly,” if the common object of the persons composing that assembly is—First.—To overawe by criminal force, or show of criminal force, Government or Legislature, or any public servant in the exercise of the lawful power of such public servant; or Second.—To resist the execution of any law, or of any legal process; or Third.—To commit any mischief or criminal trespass, or other offence; or Fourth.—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

**Explanation.**—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly. To be tried by the Village Court the members of the unlawful assembly must not be more than 10 and their common object must be confined to clauses 3 & 4 of this section.

### Punishment of a member of an unlawful assembly

143. Whoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

### Punishment for rioting

147. Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### Punishment for voluntarily causing hurt

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand taka, or with both.

### Punishment for mischief

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

### Punishment for criminal trespass

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred taka, or with both.

### Punishment for committing affray

160. Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred taka, or with both.

### Voluntarily causing hurt on provocation

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred taka, or with both.

### Punishment for wrongful restraint

341. Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred taka, or with both.



---

### **Punishment for wrongful confinement**

342. Whoever wrongfully confines any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand taka, or with both.

### **Punishment for assault or criminal force otherwise than on grave provocation**

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred taka, or with both.

**Explanation.** - Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or if the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or if the provocation is given by anything done in the lawful exercise of the right of private defence. Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

### **Assault or criminal force on grave provocation**

358. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred taka, or with both.

**Explanation.** - The last section is subject to the same **Explanation** as section 352.

### **Intentional insult with intent to provoke breach of the peace**

504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### **Punishment for criminal intimidation**

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

### **Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure**

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

#### *Illustrations*

(a) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(b) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

### **Word, gesture or act intended to insult the modesty of a woman**

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with

---

## **Punishment for theft**

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

### **Theft in dwelling-house, etc**

380. Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or use for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **Theft by clerk or servant of property in possession of master**

381. Whoever being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **Dishonestly misappropriation of property**

403. Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

#### *Illustrations*

(a) A takes property belonging to Z out of Z's possession in good faith, believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c) A and B, being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

**Explanation 1.**—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section. Illustration A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at future time to restore it to Z. A has committed an offence under this section.

**Explanation 2.**—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined, if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case, is a question of fact. It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it, it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

## **Punishment for criminal breach of trust**

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

## **Punishment for cheating**

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to

---

one year, or with fine, or with both.

### **Cheating and dishonestly inducing deliver of property**

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable to being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

### **Mischief causing damage to the amount of fifty taka**

427. Whoever commits mischief and thereby causes loss or damage to the amount of fifty taka or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### **Mischief by killing or maiming animal of the value of ten taka**

428. Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of ten taka or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### **Mischief by killing or maiming cattle, etc, of any value or any animal of the value of fifty taka**

429. Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty taka or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

## **3.3 Relevant Provisions of other Relevant Laws**

### **3.3.1 Cattle-trespass Act, 1871(Act no. I of 1871)**

#### **Penalty for forcibly opposing the seizure of cattle or rescuing the same**

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act, and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act, shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred Taka, or with both.

#### **Penalty for damage caused to land or crops or public roads by pigs**

26. Any owner or keeper of pigs who, through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten Taka. The Government, by notification in the official Gazette, may from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it has reference to cattle generally, or to cattle of a kind described in the notification, instead of to pigs only, or as if the words “fifty taka” were substituted for the words “ten taka” or as if there were both such reference and such substitution.

#### **Penalty on pound-keeper failing to perform duties**

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section 19, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty Taka.

Such fines may be recovered by deductions from the pound-keeper’s salary.

### **3.3.2 Oaths Act, 1873 (Act no. X of 1873)**

#### **Power of Court to tender certain oaths**

8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation

---

in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

**Court may ask party or witness whether he will make oath proposed by opposite party**

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation: Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

**Administration of oath if accepted**

10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

**Evidence conclusive as against person offering to be bound**

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

**3.3.3 Agricultural Labour (Minimum Wages) Ordinance, 1984 (Ordinance NO. XVII of 1984)**

**Minimum wages for agricultural labour**

3. (1) The minimum rate of wages for agricultural labour per day shall be 3.27 kilograms of rice or such amount of money as is equal to the price of this quantity of rice in the local market.

(2) The Government may, by notification in the official Gazette, review from time to time the minimum rate of wages fixed under sub-section (1), on the recommendation of the Council of Minimum Wages and Prices for Agricultural Labour constituted under section 4.

(3) The Government may, on review of the minimum rate of wages under sub-section (2), fix different rates of minimum wages for different areas, for different classes of agricultural labourer or different kinds of agricultural labourer.

(4) Notwithstanding anything contained in this section, no rate of minimum wages shall be reviewed earlier than three years from the date on which it was fixed, unless special circumstances so require.

**Payment of minimum wages**

5. (1) No person shall pay any agricultural labourer wages at a rate lower than the rate fixed by or under this Ordinance to be the minimum wages for such labourer.

(2) Nothing in sub-section (1) shall be deemed to affect, in any way, the right of an agricultural labourer to continue to receive wages at a rate higher than the minimum rate fixed by or under this Ordinance, if under any agreement or contract or otherwise, he is entitled to receive wages at such higher rate, or to continue to enjoy such amenities and other advantages as are customary for such labourer to enjoy.

**Compensation and recovery procedure**

6. (1) Any person who contravenes the provision of section 5 shall be liable to pay to the aggrieved person compensation of an amount not exceeding two times the amount which would have been paid to him had there been no such contravention.

(2) Notwithstanding anything contained in any other law for the time being in force, a suit for recovery of the wages and compensation payable to an agricultural labourer shall lie to a Village Court.

**Protection of minimum wage**

7. The minimum rates of wages fixed by or under this Ordinance shall not be called in question in or before any Court or authority.

---

### **3.3.4 The Code of Criminal Procedure, 1898 (Act No. V of 1898)**

#### **Definition**

4 (1)(f) “Cognizable offence” means an offence for, and “Cognizable case” means a case in, which a Police-officer, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant:

#### **Construction of references**

4A (2) Where, under any law for the time being in force other than this Code, the functions exercisable by a Magistrate relate to matters-

(a) which involve the appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or other proceeding or would have the effect of sending him for trial before any Court, they shall subject to the provision of the Code, be exercisable by a judicial Magistrate;

(b) which are administrative or executive in nature, such as the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.

#### **Warrant for levy of fine**

386.(1) Whenever an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may-

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the District authorizing him to realize the amount by execution according to civil process against the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless for special reasons to be recorded in writing is considers it necessary to do so.

(2) The Government may make rules regulating the manner in which warrants under sub-section (1), clause (a), are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the Courts issue a warrant to the Collector under sub-section (1), Clause (b), such warrant shall be deemed to be a decree, and the Collector to be the decree-holder, within the meaning of the Code of Civil Procedure, 1908, and the nearest Civil Court by which any decree for a like amount could be executed shall, for the purposes of the said Code, be deemed to be the Court which passed the Decree, and all the provisions of that Code as to execution of decrees shall apply accordingly:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

### **3.3.5 The Code of Civil Procedure, 1908 (Act NO. V of 1908)**

#### **Exemption of other persons**

133.(1) The Government may, by notification in the official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of the Government, entitles him to the privilege of exemption.

## 4. International Case Studies

Local justice system is prevailing in different names in different countries. For the exploration of best practice on local justice in the international arena local justice systems of India, Philippines and Papua New Guinea have been studied. Each of the systems i.e. the Indian Gram Nyayalaya, the Village Court of Papua New Guinea and Barangay Justice System (BJS) of Philippines has got its unique characteristics. The local justice system of New York State of the USA also has been examined which gives some interesting ideas. For the convenience of the study each of the said local justice systems has been briefly explained below.

### 4.1. Gram Nyayalaya of India

In India Gram Nyayalaya has been established by the Gram Nyayalaya Act, 2008. The Indian Government introduced the Bill to the Parliament on the recommendation of Indian Law Commission at its 114<sup>th</sup> Report. In the preamble of the Act it is stated

“An Act to provide for the establishment of Gram Nyayalayas at the grass roots level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities and for matters connected therewith or incidental thereto.”

Under the Act State Government has been empowered to establish Gram Nyayalaya in consultation with the State High Court at every Panchayat or for a group of contiguous panchayat. The State Government is also empowered to appoint a Nayadhikari to be eligible for appointing a Judicial Magistrate of first class in consultation with the High Court Division. Nayadhikari is to visit periodically the villages within his jurisdiction and while s/he decides to hold the mobile court outside its head quarters than sufficient notice must be provided to both the parties as to the date and place of trial.

Gram Nyayalaya has got both civil and criminal jurisdictions. It can take cognizance of an offence on a complaint or on a police report. The pecuniary jurisdiction of the Gram Nyayalaya is to be fixed by the High Court in consultation with provincial government. For the purpose of the Code of Criminal Procedure this court is deemed as the court of Judicial Magistrate of first class and the Act overrides the provisions of the Code while the Act has got overriding effect over the Code and subject to the consistency of the Code with the Act the provisions of the Code are applicable in a proceedings of a Gram Nyayalaya.

Summary trial procedure of the Code of Criminal Procedure is applicable to the trial of this Court and the accused can prefer an application of plea bargaining in this Court. The accused may engage an Advocate for him and if s/he is unable to engage an Advocate in that case Advocate would be provided to defend the accused from State Legal Service Authority. For trying civil cases the Code of Civil Procedure is applicable to the Court as far as it does not contradict with any of the provisions of this Act. State Government may fix court fee for civil cases in consultation with the High Court not exceeding 100 Rupees. The civil cases should be disposed of within 6 months from filing and the hearing should continue on day to day basis unless on recorded reasons the Court adjourns it for following day.

The Gram Nyayalaya can execute its own decree and has all power of a civil court but is not bound to follow the process of execution of decree stated in the Code of Civil Procedure rather it shall be guided by the principles of natural justice in executing its decrees.

Section 26 deals with the mandatory conciliation effort by the Gram Nyayalaya which runs as follows:

“In every suit or proceeding, endeavour shall be made by the Gram Nyayalaya in the first instance, where it is possible to do so, consistent with the nature and circumstances of the case, to assist, persuade and conciliate the parties in arriving at a settlement in respect of the



---

subject matter of the suit, claim or dispute and for this purpose, a Gram Nyayalaya shall follow such procedure as may be prescribed by the High Court. (2) Where in any suit or proceeding, it appears to the Gram Nyayalaya at any stage that there is a reasonable possibility of a settlement between the parties, the Gram Nyayalaya may adjourn the proceeding for such period as it thinks fit to enable them to make attempts to effect such a settlement. (3) Where any proceeding is adjourned under sub-section (2), the Gram Nyayalaya may, in its discretion, refer the matter to one or more Conciliators for effecting a settlement between the parties. (4) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Gram Nyayalaya to adjourn the proceeding.”

For the purpose of Section 26 District Court shall appoint a panel of conciliators in consultation with the District Magistrates according to the qualifications and experience prescribed by the High Court.

There are following two limitations of appeal from a decision of Gram Nyayalaya in criminal cases:

1. No appeal lies from a decision on the guilty pleading of the accused;
2. No appeal lies if the Court fines not exceeding 1000 rupees.

Appeal lies from other decisions of criminal cases to the Court of Session.

There are following three limitations in case of appeal in civil matters:

No appeal shall lie from any judgment or order passed by the Gram Nyayalaya-

- (a) with the consent of the parties;
- (b) where the amount or value of the subject matter of a suit, claim or dispute does not exceed rupees one thousand;
- (c) except on a question of law, where the amount or value of the subject matter of such suit, claim or dispute does not exceed rupees five thousand.<sup>24</sup>

In other decisions of civil matters appeal lies before the District Court.

## ***4.2. Village Court of Papua New Guinea***

The primary aim of the Village Court in Papua New Guinea is to maintain harmony within the community through mediation. One of the greatest strengths of the village courts system is its adaptability to the needs of the community. A Village Court can be established in any community area where there is an established need. It is up to the local leaders to request the National or Provincial Government to establish a Village Court. They should first talk with the District Administrator, the Local Council or Provincial Village Court Official who should then send their request to the Provincial Government. Depending on the provincial legislation, establishment of Village Court areas may then be a national or provincial responsibility.<sup>25</sup>

Key features of Village Courts are as follow:

- A National or Provincial Government can establish a Village Court
- A National or Provincial Government can suspend or abolish a Village Court if it is not operating correctly
- During suspension a Village Court cannot do any work and the officials do not get paid

The constitution of Village Court in Papua New Guinea is as follows:

Each Village Court Area has at least three Magistrates. When there is a full court sitting there must be 3, 5, 7 or 9 Magistrates present (Village Courts Act, Section 7). In some villages where it is customary for only one chief or bigman to make decisions, the Village Court might be given power to have only one Magistrate at a full court (Village Courts Act, Section 8).<sup>26</sup>

---

<sup>24</sup>See section 34 of the Gram Nyayalayas Act, 2008

<sup>25</sup>See section 4 of the National Village Courts Act of Papua New Guinea.

<sup>26</sup>See Village Courts Manual, Published by the Director, Community Courts Advisory Unit, Department of Justice and Attorney General,

Jurisdiction of the Village Court has been spelt out in the Village Court Act, 1989. The Act determines the jurisdiction of Village Court is as follows:

Village Courts have the power to hear matters in the area for which it was established in relation to:

- criminal matters as set out in the Village Court Regulations
- a dispute that arose in its area
- a dispute where the subject matter of the dispute is within its area
- a dispute where all the parties to a dispute usually live in its area
- a dispute where some of the parties involved in a dispute usually live in the area and the others agree to have the case heard in the court.

The Village Courts Manual states the power of Village Courts in the following words:

A Village Court can order a party to a dispute to perform work for the aggrieved party but the court cannot impose a penalty in a civil case. Any order to work must be for no more than 8 hours in one day and no more than six days in a week and for no longer than 12 weeks. In a criminal case (offence) a person has broken the law of the village, maybe by stealing, fighting, drinking, or some such thing. This case must be decided by a full court. This is because it would be unfair for one Magistrate to decide on the guilt or innocence of a person. People can be penalised if they commit an offence. They can be placed on a community work order or fined up to K200. If they fail to pay the fine, the District Court may send them to jail. (Village Courts Act, Sections 61 to 68)

About the execution of Village Courts Order the manual states the following simple mechanism:

When someone is ordered by a Village Court to do community work or certain other things or pay compensation, sometimes they do not do it. The Village Court needs a way to enforce the order it has made. The Village Court Act tells us that people who do not obey orders of the Village Court or fail to pay compensation when ordered or obstruct the court in its duties, are guilty of an offence and can be fined or placed on a community work order for up to 6 months or sentenced to imprisonment (Sections 72 to 76). If they fail to pay the fine they can be jailed through the District Court. This must only be done if the person being ordered has had a chance to explain why he or she has not obeyed the court and should only be used after the person has been warned. (Village Courts Act, Sections 61 to 68).

### **4.3 Barangay Justice System of Philippines**

In Philippines the local justice system is prevailing in the name of Katurangang Pambarangay or Barangay Justice System (BJS). It is a quasi formal system based on traditional mode of mediating local disputes. There are approximately 42,000 Barangay or local government unit exist in Philippines. The BJS operates at Barangay. On the auspicious of the United Kingdom Department for International Development a study was conducted by Stephan Golub of the University of California at Berkeley where it is found<sup>27</sup> :

The BJS does offer key advantages over the judicial system. These include:

- It is based on Philippine traditions, which include the use of friends and neighbors to amicably settle disputes.
- The BJS is far less costly than the judiciary, with an average filing fee of 20 pesos, a tiny fraction of court costs and lawyers' fees.
- It also is far faster, with problems settled in a matter of days or weeks, rather than (typically) years.

The procedure of BJS is that a complaint has to be filed with the Barangay Captain (PB) or a delegated officer of

PO Box 591, Waigani NCD, Papua New Guinea, available at [www.justice.gov.pg/vc](http://www.justice.gov.pg/vc) , last visited on 12-04-2011.

<sup>27</sup>See Stephen Golub, "Non-State Justice Systems in Bangladesh and the Philippines" Published by Boalt Hall School of Law, University of California at Berkeley, January 2003.



Barangay and he would call the disputant parties to appear before him for mediation. If the PB fails then he fix a date for constituting conciliation panel called Pangat consisting three members. The Pangat will start mediation process again. The BJS can only hear the disputes between members of the same Barangay or of the neighboring Barangays. In criminal matters the BJS can only handle cases where the punishment for the offence does not exceed a year in prison or a fine of 5,000 pesos (about 60 pounds). The BJS has got some similarities about the filing and constitution of court with the Village Court of Bangladesh.

#### **4.4 Town and Village Courts of New York State**

At present, more than 1,800 justices serve in 1,277 town and village courts throughout New York State. These justices, most of whom are not attorneys, serve in a system that was founded more than 300 years ago, with roots in medieval England.<sup>28</sup> The judges of the Town and Village Courts are mostly lay judges and work on part time basis. A report<sup>29</sup> was published in September 2008 on the future of the Town and Village Courts in New York State which reveals the fact as follows:

[t]he Justice Courts play a crucial role in the lives of millions of people across our state, dispensing justice in millions of cases each year, and collecting over \$210 million annually in fines and fees on behalf of state, county and local governments. In addition to routine traffic infractions and parking violations, local justices preside over all manner of misdemeanor criminal matters, from drunken driving cases to sexual offenses, domestic violence assaults, drug offenses, and other charges. In such cases, local justices conduct suppression hearings, authorize search warrants, preside over jury trials, and impose jail sentences of up to one year. On the felony side, Justice Courts conduct arraignments (including on weekends, holidays and in the middle of the night) in all categories of cases, from armed robberies to homicides. Their civil jurisdiction includes not only small claims matters, but also residential and commercial landlord-tenant cases, summary eviction proceedings and other civil disputes.

The main criticisms against the Town and Village Courts are as follows:

- i. Non-attorneys are dispensing justice in complex criminal cases with little or no supervision;
- ii. Some of these courts are being operated in a primitive condition;
- iii. Local Justices are not sufficiently independent of the local government or law enforcement; and
- iv. There are instances of judicial errors and abuses made by these courts.

The strength of these courts has been stated in the aforementioned report as follows:

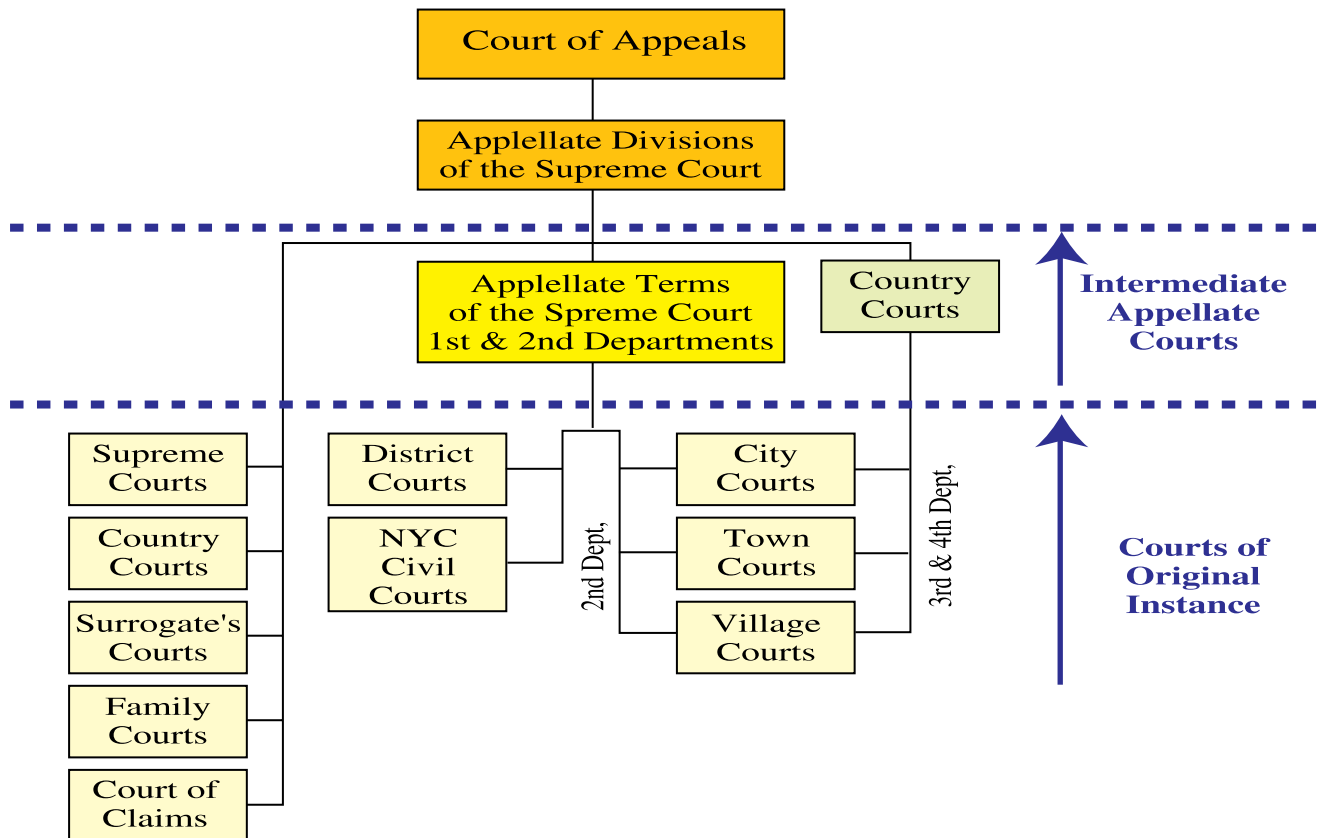
On the other hand, supporters of the Justice Court system point to the fact that millions of cases are successfully resolved by these courts without complaint year after year. Others applaud the dedication and experience of the justices – attorneys and non-attorneys alike – who are available to conduct proceedings at all hours, most for nominal compensation. And many point to the critical role that these courts play in their communities, being accountable to local interests and needs in a way that reflects the strength of the democratic process at the most tangible of levels.

Two flow charts have been cited below showing the structure of the Judiciary of New York State:

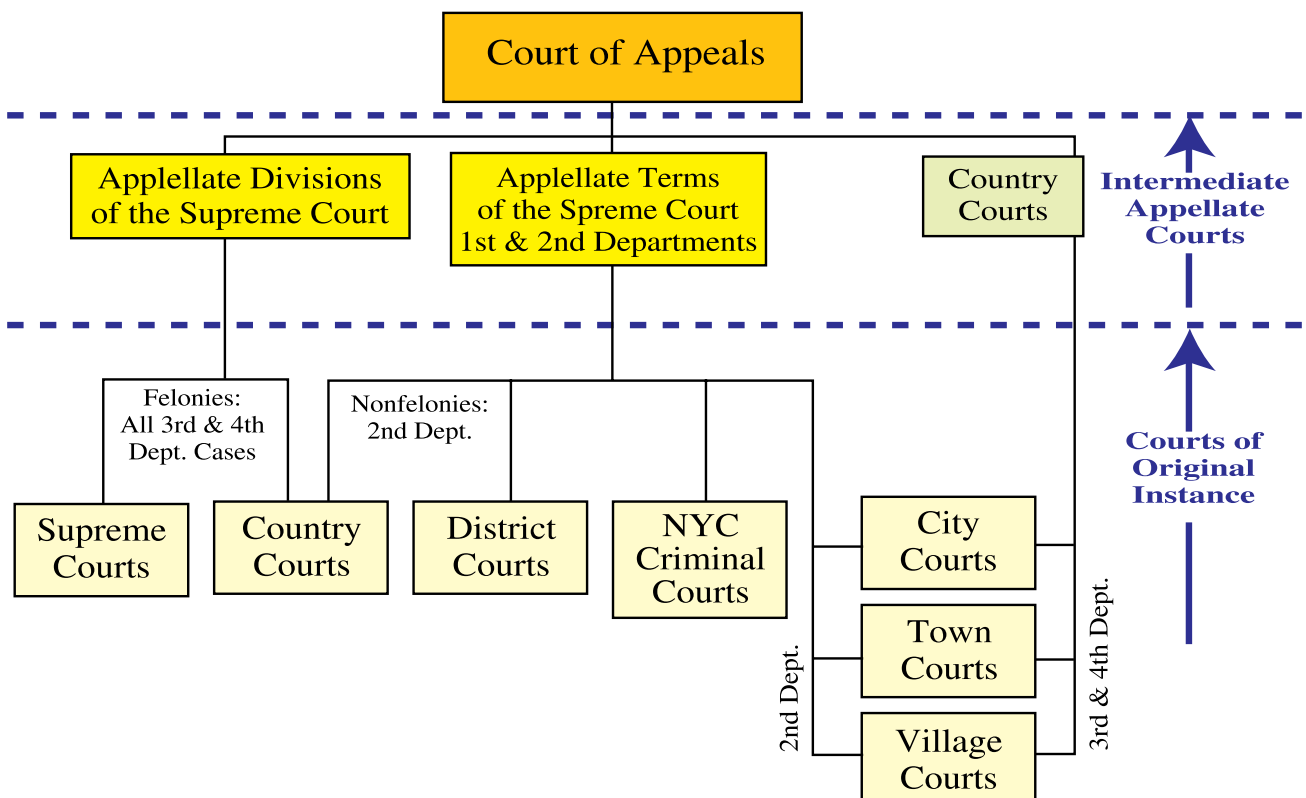
<sup>28</sup> See “Justice Most Local: The Future of Town and Village Courts in New York State”, a report by the Special Commission on the Future of the New York State Courts, available at [www.nycourts.gov](http://www.nycourts.gov) last visited on 12-04-2011

<sup>29</sup>ibid.

## CIVIL COURT STRUCTURE



## CIVIL COURT STRUCTURE



## 5 Required Changes in the Legal Framework of VC

It is already stated that the basic laws which regulate the functions of VC are the Village Courts, 2006 and the Village Courts Rules, 1976. Apart from these laws the Penal Code, 1860, The Cattle-trespass Act, 1871 the Oaths Act, 1873 and The Agricultural Labour (Minimum Wages) Ordinance, 1984 (Ordinance No. XVII of 1984), the Public Demands Recovery Act, 1913, The Local Government (Union Parishad) Act, 2009 are important and relevant in respect of the VC.

Besides these the Code of Civil Procedure and Criminal Procedure are also connected with the VC indirectly. On perusal of these laws and rules detailed amendments and framing of new sets of Rules have been suggested. A consultative workshop was held on the Draft Report of the review of legal framework of VC at the country office of UNDP, Bangladesh where a serious concern was raised to incorporate domestic violence in the jurisdiction of VC. These issues have been considered duly.

Subsequently a National Consultation was held where Parliamentarians, Judges, Legal Academia, Lawyers, VC Officials, members of civil society and NGO workers participated including media workers. The draft report was presented in that consultation and the report was critically analyzed by a judge of the High Court Division Mr. Justice Emdadul Huq, Professor Dr. Symiya Khair, Chair, Department of Law, University of Dhaka and Mr. Aftabuddin, Local Government Specialist and Former Additional Secretary to the Government. The opinions of the panelists and participants are duly considered in the Report.

### 5.1 Required Changes in the VC Act and other Relevant Laws

The amendments of the Village Courts Act, 2006 and framing rules under the Act should be considered in the following contexts:

- i. Access to Justice;
- ii. Separation of Judiciary;
- iii. Alternative Dispute Resolution;
- iv. Restorative Justice;
- v. Socio-economic condition; and
- vi. Domestic Violence

#### 5.1.1 The Village Courts Act, 2006

Considering the aforementioned contexts following issues of the VC Act, 2006 have been considered carefully.

##### a. Jurisdictional Changes

The VC can try offences when worth of offence related money or property is up to BDT 25,000/ and try civil cases when worth of money claimed or movable property of offence related immovable property is up to BDT 25,000/. This amount has become too little in the context of present socio-economic condition. Therefore, several recommendations have been made from both judges and VC officials to change the amount. Maximum recommendations are to enhance the pecuniary jurisdiction of the VC up to minimum BDT 50,000.

Regarding subject matter jurisdiction an important recommendation has been forwarded from a Judicial Magistrate at a recent workshop<sup>30</sup> that in the first part of the Schedule of the VC Act in order to try the offence under section 380 of the Penal Code i.e. theft in dwelling house by the VC, it should be empowered to try offence under section 448 i.e. criminal house trespass. Otherwise it would not be practically possible for VC to try the offence of theft in dwelling house without being empowered to try the criminal house trespass. Because

<sup>30</sup> The workshop titled, "The Criminal Trial at VC and the Role of Judicial Magistracy" held on 23.12.2010 at Bhandaria, Pirojpur.

it is not possible to still something from a dwelling house without house trespassing.

Some of the participants at the Workshop<sup>31</sup> with the Judicial Magistracy suggested to incorporate the compoundable offences stated in the Code of Criminal Procedure, 1898 in the first part of the Schedule of the VC Act. Such amendment will substantially reduce the volume of cases in the Court of Judicial Magistrates as well such empowerment of VC would pave the way of access to justice for poor, disadvantaged and women at a very little cost.

Some participants<sup>32</sup> at the workshops recommended that the subject matters of the Arbitration Council assigned by the Muslim Family Laws Ordinance, 1961 should be included in the second part of the Schedule of the VC Act. The following subject matters have been assigned to the Arbitration Council consisting of the UP Chairman and two other representatives of the respective parties:

- i. Second marriage by a man in existence of a wife;
- ii. Divorce by both the husband and wife; and
- iii. Maintenance.<sup>33</sup>

The fact is that the Muslim Family Laws Ordinance is applicable only to Muslims. But village court is accessible to the all cast and creed. Moreover, Arbitration Council cannot impose any compensation where VC can fine as well impose compensation. The subject matters of Arbitration are purely matter of negotiation on the other hand the jurisdiction of VC is matter of adjudication as well arbitration. Therefore, the subject matters of Arbitration Council may not be feasibly incorporated into the VC Act.

Some of the important opinions obtained during interviews about jurisdiction are cited below:

The pecuniary jurisdiction of VC should be enhanced to 100000/ (one hundred thousand) BDT and limit of fine should be enhanced up to 2000/ (two thousand) BDT instead of BDT 500/. The purpose of increasing the amount notwithstanding the economic status of the common man is to use this as deterrence to irregularities/rights violations.

- Dr. Sumaiya Khair, Chairperson, Department of Law, University of Dhaka.

The power of the Village Court should be increased to enable the Court to order to pay compensation up to tk. seventy-five thousand in criminal matters, and to take up cases of the value of the same amount in the civil matters.

- Dr. Shah Alam, Chairman, Law Commission, Bangladesh

## **b. Constitutional Changes**

VC is now to be constituted by 5 members. UP Chairman is the Chairman of VC. Each party is to nominate two members among which one must be a UP Member. This constitution is criticized by some Advocates and Judges. That after separation of Judiciary such constitution is opposed to the spirit of separation.

One recommendation is that a panel of judicial members should be elected at the time of election of the Union Parishad and among which one should perform the duty of VC Chairman by rotation and from rest other 4 members are to be nominated. This panel of members should not take part in any other function of the Union Parishad. If such proposal could be incorporated in the VC Act then definitely it would be a nice constitution of VC. But the present constitution also can be maintained if the Union Parishad election remains non partisan. But if the Union Parishad Election becomes partisan in that case there would be no other better alternative than making the provision of election of the panel members for VC.

Otherwise like Gram Nayaloy of India or Village Court of Papua New Guinea First Class Magistrate can be appointed at the VC with the approval of the Supreme Court of Bangladesh. But before making such proposal it must be considered that how far it could be possible in the present socio-economic context of Bangladesh.

Section 5 of the VC Act deals with the constitution of the VC and in sub-section (5) it has been stated that if the members of the VC cannot be nominated within the prescribed time in that case the VC can be constituted

<sup>31</sup>supra.

<sup>32</sup>Advocates, Judges and VC officials as well as officers belong to administration like Deputy Commissioner, Additional Deputy Commissioner and Upazilla Nirbahi Officer.

<sup>33</sup>See the Muslim Family Laws Ordinance, 1961 (Ord. No. VIII of 1961).

without such members and can legally carry out its function. But it should be clearly stated here in such a case how the VC should be constituted and if Chairman of UP alone can constitute VC then it should be stated in the provision and consequently how he alone can make decision and whether appeal lies against his decision should be stated in the subsequent provisions.

A participant from the Ministry of Woman and Children Affairs opined during a National technical consultation<sup>34</sup> that there should be a provision for at least one woman member in the constitution of a village court where interest of woman or children involved with any party to a case. This is an important proposal on which due importance is given.

Some of the important opinions obtained during interviews about the constitution are cited below:

The option of electing judicial members during UP election could well be an option that may ensure the neutrality of the VC. Indeed, gender balance is another factor that should be looked into. The members of the VC should be properly trained on the law and procedure of VC. - Dr. Sumaiya Khair, Chairperson, Department of Law, University of Dhaka. The stability in the composition of the Court needs to be ensured meaning that the chairman of the Union Parishad should not be excluded from the Court on the mere application of any party, but such exclusion ought to be justified on very cogent ground i.e. interest or involvement of the chairman in the dispute.- Dr. Shah Alam, Chairman, Law Commission, Bangladesh

In case of inability of Chairman of UP to conduct VC timely a resolution should be authenticated by the Upazila Nirbahi Officer nominating a member of the UP to preside over the VC.-Mr. Fazlul Huq-Secretary, Madaripur Legal Aid Association.

Local elected leader should be kept away from VC. District Judge may nominate a panel of members for VC or alternatively members of VC can be elected. Mr. A.K.M Hussain, Joint Secretary, Legislative Support Service, Bangladesh Parliament Secretariat.

### **c. Required Changes to Incorporate ADR**

Alternative dispute resolution (ADR) is a much talked issue and needed to be formally incorporated in the VC Act, 2006. Because the Act is silent about the ADR and only rule 33 of the Village Courts Rules, 1976 provides a scope of mediation through admission of the petitioner's claim and satisfaction of the claim in presence of the Chairman of the respective Union in which case the Village Court need not be constituted as per section 5 of the Act and rule 10 of the VC Rules.

### **d. Required Changes in the Powers of VC**

Section 7 of the VC Act deals with the powers of VC. The VC can only pass an order imposing compensation up to BDT 25,000/ in respect of the offences stated in the part one of the Schedule of the VC Act. In the cases related to the subject matters described in the part two of the Schedule the VC can order to pay money up to BDT 25,000 or the return of the property or its possession to the real owner of the property.

In respect of power of payment of compensation or the worth of the property involved in a civil case the recommendations put forward from the Judges, Advocates and VC officials as well as officers belong to administration and police suggest that the power should be enhanced up to BDT 50,000 to 100000 both in pecuniary and subject matter. It can be enhanced up to BDT 100000 because the pecuniary jurisdiction of an Assistant Judge is BDT 200000 and Senior Assistant Judge is BDT 400000.<sup>35</sup>

Some of the Judges raised question that how village court can determine the issue of possession of an immovable property in absence of any legal back ground and clear idea about the title and possession related papers. Moreover the VC officials don't have the support of trained surveyor sometimes the presence and interference of such a technical person becomes necessary to determine possession.

Sub-section (3) of section 3 of the VC Act provides that the provisions of ouster of jurisdiction of a civil court shall not be applicable in respect of a suit or proceedings to establish title or recovery of possession of an immovable

<sup>34</sup> A National Technical Consultation on Review of Legal Framework of Village Courts was held at BRAC Centre Inn, Dhaka on April 20, 2011 organized by the Activating Village Courts in Bangladesh Project.

<sup>35</sup> See section 19 of the Civil Courts Act, 1887 (Act No. XII of 1887).

property where village court orders to return the possession of the immovable property. Therefore, aggrieved party is at liberty to move before the Civil Court to redress such wrong related to immovable property.

Some of the important opinions obtained during interviews about the powers of VC are cited below:

Do you think that the Village Courts should have been empowered to inflict sentence of imprisonment?

Ans. No as such a move would undermine the conciliatory and restorative nature of VC.- Dr. Sumaiya Khair, Chairperson, Department of Law, University of Dhaka.

Mr. A.K. M. Hussain, Joint Secretary of Bangladesh Parliament Secretariat answered the question negatively and said if such power is vested that power should be recommendatory i.e. the court may recommend to inflict sentence by a criminal court.

Mr. Fazlul Huq, Secretary, MLAA also answered the question negatively and opined it would be against the spirit of restorative justice.

### **e. Required Changes Regarding Decision and Appeal**

Section 8 provides for the provisions of finalization of decision of VC as well appeal from such decision. There are some gaps in the provisions. Particularly if the VC is constituted by the Chairman of UP as per the provisions of section 5 (5) of the VC Act in such a case how the decision shall be drawn and what would be the provision for appeal the law does not speak anything about the said concerns.

Another issue may arise when the decision is to be taken at the presence of 4 Members and the Members votes are divided into 2:2 i.e. there is a tie in the decision. The law is silent in this regard. Some Judges and Advocates opined that there should be a provision for appeal from all kinds of decisions i.e. unanimous or divided. But it is very much clear from the preamble of the Act that the Act is provided for ensuring speedy and easy disposal of disputes in the Union level. Therefore, incorporation of provisions for appeal from all kinds of decisions of VC would make the matters complicated and disposal of cases would be substantially delayed.

Moreover, for trifling matters when the decision is taken unanimously or with a maximum majority in such a case the provisions for appeal won't be favourable for establishing grass root level justice and will make the litigation expensive.

An important opinion obtained during interviews about decision and appeal is cited below:

An appellate authority should be established in the UP which might be constituted by 7 Persons- Mr. A.K. M. Hussain, Joint Secretary of Bangladesh Parliament Secretariat

### **f. Relevant Changes in the Enforcement of Decision**

Section 9 of the VC Act provides for enforcement of VC decision. Sub-section (3) provides for recovery of money of compensation under the Public Demands Recovery Act, 1913. But such recovery process is very complicated and cumbersome. Under the existing provision Chairman Union Parishad shall have to send a requisition to the Upazilla Nirbahi Officer (UNO) in the prescribed form with necessary fees and on getting such requisition UNO shall issue a notice to the certificate debtor.

From the date of service of such notice the certificate cannot be executed within 30 days and within that period the certificate debtor can file a petition before the UNO (Certificate Officer) denying wholly or partly the claim stated in the notice. Without disposing of the petition the Certificate Officer shall not be able to execute the certificate. One thing should be noted here that though the Village Courts Rules prescribed form no. 8 to recover the money under the PDR Act but the Rules framed under PDR Act provides for separate requisition form and in recovering money under section 9 (3) of the VC Act the form prescribed by the Rules framed under the PDR Act shall be applicable. This is a clear inconsistency prevailing in the VC Act.

Under section 68 (2) of the Local Government (Union Parishad) Act, 2009 all arrear taxes of the Union Parishad are recoverable as public demand. As per the rule 12 of Union Parishad (Tax) Rules, 1960 if any person defaults in paying the tax of a Union Parishad a defaulter list in this regard shall be hanged in the notice board of the Union Parishad. On expiry of 15 days from the date of such hanging the Union Parishad shall take step to recover the arrear as public demand and according to the provision of section 68 (3) of the Local Government



(Union Parishad) Act, 2009 any UP member or officer empowered in this regard may attach and dispose of the movable property of the concerned person.

Apart from this Government may empower any Union Parishad under sub-section (4) of section 68 of the said Act for the recovery of arrear taxes of UP to attach and sell the immovable property of the concerned person. According to Rule 13 (1) of the Union Parishad (Tax) Rules, 1960 to recover the arrear tax the Chairman can exercise the power of issue warrant of attachment and sell the property under sub rule (2) and under sub-rule (3) the attachment warrant shall be executed by the Secretary UP or any salaried employee empowered by the Chairman in this regard. It is clearly stated in sub-section (3) of section 9 that arrear money of compensation awarded by the VC is to be recovered in the process of recovery of arrear taxes of UP.

Therefore, it could be easier to recover the compensation money awarded by a VC under the provisions of the Local Government (Union Parishad) Act, 2009 instead of existing provision to recover the money of compensation under the PDR Act. Necessary amendment can be brought to substitute the Local Government (Union Parishad) Act, 2009 instead of PDR Act.

Some of the important opinions obtained during interviews about the enforcement of decisions of VC are cited below:

Do you think that the village courts should be empowered to enforce its own decision/ order/decreed?

Ans. Yes, otherwise it may become another toothless institution. - Dr. Sumaiya Khair, Chairperson, Department of Law, University of Dhaka.

This question is answered negatively by Mr. A.K. M. Hussain, Joint Secretary of Bangladesh Parliament Secretariat and Mr. Fazlul Huq-Secretary, Madaripur Legal Aid Association.

But Dr. Shah Alam, Chairman, Law Commission, Bangladesh opined that the Court ought to be empowered to execute its own decision. Same opinion is given by Advocate Rahmat Ali, Chairman, Parliamentary Standing Committee on the Ministry of Local Government, Rural Development and Cooperatives.

#### **g. Required Changes Regarding Transfer of some Cases**

Section 16 of the VC Act provides the power to the District Magistrate to withdraw cases stated in the first part of the Schedule of the VC Act for public interest and justice from VC and send it to any criminal court for trial and disposal. Since this is a judicial work therefore after separation of judiciary affected from 1 November 2007 the District Magistrate should be construed as Chief Judicial Magistrate.<sup>36</sup>

However by way of this statutory interpretation Chief Judicial Magistrates are exercising this power of withdrawal and transfer under section 16 but for the sake of clarity necessary amendment should be brought to substitute Chief Judicial Magistrate for District Magistrate. Power of transferring civil cases from VC should be vested with the District Judge.

#### **h. Required Changes Regarding Investigation by Police**

According to section 17 police is empowered to investigate the cognizable offences regarding first part of the Schedule of the VC Act. Maximum VC officials detect it as a hindrance on the trial of criminal cases at VC. The Police should not be able to investigate if any such case falls under the first part of the Schedule of the VC Act thought it is cognizable. At least in such a case the police should obtain a clearance from the concerned UP Chairman before investigating the case, such opinion is given by several participants of different FGDs and workshops. Whether such change should be brought demands careful scrutiny.

An important opinion obtained during interviews about investigation by police is cited below:

The power of police should be curtailed in investigating cognizable offences triable by VC- Mr. Fazlul Huq-Secretary, Madaripur Legal Aid Association

#### **i. Required Changes Regarding Power of Exemption**

Section 19 of the VC Act empowers the Government to exempt any areas or any cases or class of cases or any

<sup>36</sup> See section 4 A (2) (a) of the Code of Criminal Procedure, 1898.

community from the operation of all or any of the provisions of the Act. Such power might curtail the judicial power of VC and may hamper the right of seeking justice of the grass root level people as opined by a Ld. Advocate in a field trip.

However, during the National Technical Consultation<sup>37</sup> one of the participants from the Ministry of Law, Justice and Parliamentary Affairs opined that for public interest keeping such provision is necessary and it does not curtail any judicial power of VC or hamper the right of grass root level people to seek justice. The second opinion carries substance and bringing amendment in the section does not seem to be necessary.

### 5.1.2. Changes in the VC Act

The relevant sections to constitute offences triable by a VC can be incorporated in the Schedule of the Act rather putting some sections of the Penal Code and Cattle-trespass Act in the Schedule. The penal provisions regarding compoundable offences should be incorporated in the VC Act. The PDR Act should be substituted by the Local Government (Union Parishad) Act, 2009 in section 9 of the Act.

Some of the important opinions obtained during interviews about the powers of VC are cited below:

All compoundable offences mentioned in the Code of Criminal Procedure, 1898 might be decided in VC- Mr. A.K. M. Hussain, Joint Secretary of Bangladesh Parliament Secretariat Domestic violence, dowry-related violence may be considered for inclusion as these issues principally predominate the village justice scenario.- Dr. Sumaiya Khair, Chairperson, Department of Law, University of Dhaka.

### 5.1.3 Changes in the light of Access to Justice

The VC could be a nice place for ensuring legal protection of the grass root level people particularly for women, poor and disadvantaged group. If the changes mentioned above can be brought, in that case definitely legal protection for the said people can be ensured substantially.

For enhancing legal awareness there should be a mass campaign about the VC in rural area and different advocacy and communication methods should be adopted. Provisions could be also made in the Act to entrust Union Parishads to take necessary step in making people aware about the VC. The introduction of a court assistant could be helpful in providing necessary legal aid to the poor people of grass root level. Moreover, Members of the UP should be entrusted to help the poor people in filing cases before the VC. The adjudication process would be substantially improved once the amendment proposals are incorporated and Rules are framed. Enforcement mechanism will also be improved when the VC shall adopt the provisions of Local Government (Union Parishad) Act, 2009 in realizing the money of compensation and the provision of PDR Act is omitted.

An important opinion obtained during interviews about access to justice is cited below:

Advocate should be allowed to appear at VC and the fees of Advocate should be provided by the Government by way of legal aid. - Advocate Rahmat Ali, Chairman, Parliamentary Standing Committee on the Ministry of Local Government, Rural Development and Cooperatives.

### 5.1.4 Changes in the context of Separation of Judiciary

Specific amendments should be brought to the section 16 of the VC Act in order to incorporate the Chief Judicial Magistrate in the place of District Magistrate because after separation of Judiciary District Magistrate cannot perform any judicial function. The power of transfer of criminal cases from village courts is a judicial function. Moreover in drafting rules specific attention should be given on the rule 12 where the then Sub divisional Magistrate was empowered to replace the Chairman of VC and could stay the proceeding of the proceedings before the VC during the pendency of such replacement. This function is purely a judicial function and concerned Chief Judicial Magistrate should be empowered to exercise this function.<sup>38</sup>

<sup>37</sup>see supra FN 24.

<sup>38</sup> Gopalganj Workshop with Judicial Officers (held on 24 July 2010).



---

### 5.1.5 Changes in the light of Alternative Dispute Resolution (ADR)

The Village Courts Act, 2006 does not provide any express provision for ADR. There should be specific provisions in the Act itself for ADR like sections 89 A, 89B and 89 C of the Code of Civil Procedure, 1908, pre-trial reconciliation under section 10 and post trial or after closing evidence reconciliation under section 13 of the Family Courts Ordinance, 1985 and pre trial mediation, mediation at the time of execution and mediation at the appellate stage under the Money Loan Court Act, 2003 etc.

Therefore, in the VC Act the provisions of mediation should be inserted.

### 5.1.6 Changes to Introduce Restorative Justice Mechanism

Restorative justice mechanism is basically applicable to enforce criminal justice. Since the first part of the schedule of the VC Act deals with the criminal cases therefore, a suitable technique of restorative justice should be introduced in the VC Act to ensure restorative justice. Victim-Offender Mediation (VOM) could be one of the solutions.

Victim-offender mediation or VOM (also called victim-offender dialogue, victim-offender conferencing, victim-offender reconciliation, or restorative justice dialogue), is usually a meeting, in the presence of a trained mediator, between the victim of a crime and the person who committed that crime. This system generally involves a few participants, and often is the only option available to incarcerated offenders. VOM originated in Canada where it formed part of an alternative court sanction in a 1974 Kitchener, Ontario case involving two accused vandals who met face-to-face with their many victims.<sup>39</sup>

The conciliation meeting might be an alternative of VOM which is practiced in Bangladesh as per the Money Loan Court Act, 2003 (Artho Rin Adalat Ain, 2003). It won't be very practicable to suggest incorporating any of such methods in the VC Act, 2006 right now because of shortage of adequate trained man power at the grass root level who would be able to implement such mechanism at VC level.<sup>40</sup>

### 5.1.7 Changes in the Context of Socio-Economic Condition

It is already discussed that in the present socio-economic condition of the rural area the pecuniary jurisdiction of the VC should be enhanced from 25000/ BDT to at least 50,000 / BDT. In a recent report published by the Law Commission, Bangladesh it is recommended that the pecuniary jurisdiction of the VC should be enhanced to 75000/ (Seventy five thousand) BDT.<sup>41</sup> Some of the participants at the Workshop<sup>42</sup> with the Judicial Magistracy suggested incorporating the compoundable offences stated in the Code of Criminal Procedure, 1898 in the first part of the Schedule of the VC Act. In the changing socio-economic circumstances of the rural area such additional powers can be vested with the VC.

## 5.2 Empowering VC to Try Domestic Violence

Recently Domestic Violence (Prevention and Protection) Act, 2010 has been enacted. But the law is not yet enforced by the gazette notification of Government. It defines domestic violence as any physical or mental torture, sexual atrocity and financial damage on a woman or a child caused by a person related to the family. An application preferred under the Act is triable by a Judicial Magistrate or a Metropolitan Magistrate. Under this Act the Court can only impose unlimited fine for causing domestic violence. The spirit is conciliatory and akin to the village court concept.

Therefore, the VC might be empowered to try domestic violence committed in rural area. For such empowerment besides amending the Village Courts Act, 2006 the Domestic Violence (Prevention and Protection) Act, 2010 should be amended. But some of the experts on Village Courts do not recommend overburdening Village Courts with such complicated laws which would frustrate the purpose of Village Court to render justice at grass root level.<sup>43</sup>

---

<sup>39</sup> see [www.en.wikipedia.org](http://www.en.wikipedia.org), last visited on 10 January 2011.

<sup>40</sup> Such observation is given by one of the panel discussants at the National Consultation on the Village Courts Act, 2006: Challenges and Way Forward, held on July 30, 2011.

<sup>41</sup> The Report on the Implementation of ADR in the Perspective of Bangladesh-Law Commission-[www.lawcommissionbangladesh.org](http://www.lawcommissionbangladesh.org).

<sup>42</sup> supra FN 15.

<sup>43</sup> Mr. Fazlul Huq, Secretary, Madaripur Legal Aid Association, New Town, Madaripur-7900 opined at an interview.

## 6 Necessary Amendments of the VC Act, 2006

In the light of the aforementioned discussion the necessary amendments to be brought in the VC Act, 2006 are stated below.

### 6.1 Amendment in the definitions

Amendment of section 2 of the Act No. IXX of 2006. – In the definitions the new definitions of ‘Cognizable Offence’ and ‘Limitation Act’ inserted. Apart from these definitions of “Union” and “Union Parishad” have been amended due to enactment of the Local Government (Union Parishad) Act, 2009 (Act No. LXI of 2009).

### 6.2 Amendment in section 3

Amendment of section 3 of the Act No. IXX of 2006.-In section 3 sub-section (2) of the Act No. IXX of 2006 for the words “A Village Court shall not try a case relating to an offence specified in part I of the schedule, if the accused had previously been convicted of a cognizable offence” the words “No criminal case shall be tried by a Village Court if the accused of the case is previously convicted by any court for any cognizable offence.”.

### 6.3 Amendment in section 4

Amendment of section 4 of the Act No. IXX of 2006.-In section 4 of the Village Courts Act, 2006 after sub-section (2) following new sub-section (3) shall be inserted. Namely:

“(3) The Assistant Judge shall dispose of the revision within 30 days from the date of filing. “

### 6.4. Amendment in the Constitution of VC

Amendment of section 5 of the Act No. IXX of 2006.-In section 5 of the Village Courts Act, 2006 existing sub-section (1) and (5) shall be substituted by the following sub-sections:

“(1) A Village Court shall consist of a Chairman and two members to be nominated by each of the parties to the dispute:

Provided that one of the two members to be nominated by each party shall be a member of the Union Parishad concerned: Provided further that where in a dispute it involves the interest of a woman or a child with any party that party must nominate one woman member among the said two members to be nominated by it.

“(5) Notwithstanding anything contained in other provisions of this section, if the member cannot be nominated within the prescribed time, then the concerned Union Parishad shall in the prescribed manner nominate the members of the Village Court as per the provisions of sub-section (1) and trial shall proceed accordingly.”

### 6.5 Amendment to Enhance Power of the Village Court

Amendment of Section 7 of the Act No. IXX of 2006.-In sub-section (1) of section for the words “twenty five thousand” the words “fifty thousand” shall be substituted.

### 6.6. Amendment to incorporate ADR

Insertion of sections 7A and 7B in the Act no. 19 of 2006.-In the Act no. 19 of 2006, after section 7, the following new sections 7A and 7B shall be inserted, namely:-

“7A. Mediation, etc.-(1) The first session of the village Court shall be held within 15 (fifteen) days after constitution of a Village Court under section 5 and in that session the Village Court shall offer both the parties to choose disposal of the case either through mediation process or by trial process.

(2) If both the parties choose to dispose of the case through mediation process in that case the Village Court shall appoint maximum five (5) persons as mediators of the case on the written consent of both the parties in that session or within seven (7) days from the session.

(3) The mediator or mediators appointed under sub-section (2) shall fix the place of mediation, date and time and inform both the parties.

(3) The case shall be disposed of through trial process in the prescribed manner if both the parties do not agree to dispose of the case through mediation process or any party or both the parties to the case choose to dispose of the case through trial process.

(4) The mediation process under this section shall be confidential and any discussion or consultation held, evidence adduced, admission, statement or comment made between the parties or their appointed representatives shall be deemed to be confidential and shall not be stated or admissible in evidence subsequently at any stage of the trial or in any other proceedings in a case of any other court on the disputed matter.

(5) ) If both the parties choose to dispose of the case through mediation process under sub-section (1) the mediator or mediators must conclude the mediation process within fifteen (15) days which can be extended fifteen (15) days more with the consent of both the parties.

(6) If the dispute is resolved within the period provided in sub-section (5) in that case the parties shall submit a joint compromise petition stating the conditions of the compromise before the Village Court which shall contain signature, or as the case may be, left thumb impression of both the parties and as witness, the signature of the mediator and any person present in the mediation.

(7) The compromise petition submitted under sub-section (6) shall be deemed as the order or decree of the Village Court issued as per the form of the Schedule 3.

(8) No appeal or revision shall lie in any higher court against a decision or a decree of a case disposed of under this section following mediation process.

(9) If both the parties do not agree to dispose of the case through mediation process or if both the parties or any of the parties choose to dispose of the case through trial process in that case the case shall be disposed of in the prescribed manner through trial process.

(10) If the parties failed to dispose of the case within the time limit provided under sub-section (2) through mediation process chosen by them, in that case the Village Court shall stand dissolved.

(11) Notwithstanding anything contained in this Act or in any other law, if a Village Court stands dissolved under sub-section (4) in that case any party to the dispute may within 60 (sixty) days from the dissolution of the Village Court file a case in the criminal court in a criminal matter having jurisdiction and in the civil court in a civil matter having jurisdiction.

**7B. Time limit for disposal of cases under trial system.**-(1) If the case is taken for disposal by trial system Under section 7A in that case the Village Court shall dispose the case within 90 days from the date of beginning of trial which can be extended for another 30 days.

(2) If a case is not disposed of within the time limit as stated in sub-section (2) in that case after the expiry of the time limit the Village Court shall stand dissolved.

(3) Notwithstanding anything contained in this Act or in any other law, if the Village Court is dissolved under sub-section (2) any party to the dispute may within 60 days from the date of dissolution file a case to the Court of the Magistrate of First Class having jurisdiction in criminal case and to the Court of Assistant Judge having jurisdiction in civil case.”.

## **6.7 Amendment of Provisions of Decision and Appeal**

Amendment of section 8 of the Act No. IXX of 2006.-(1) In section 8 of the Act after sub-section (1) the following new sub-section (1A) shall be substituted:

“(1A) If the decision of a Village Court is tied by two to two (2:2) votes in presence of four members in that case the Chairman shall have a casting vote to finalize the decision.”

(2) In section 8 of the Act the in sub-section (2) the words “If the decision of a Village Court is by a majority of three to two (3:2)” shall be substituted by the words “If the decision of a Village Court is taken by a majority of three to two (3:2) votes or as per the provisions of sub-section (1A)”.

## **6.8 Amendment in Enforcement of Decision of Village Court**

Amendment of section 9 of the Act No. IXX of 2006.-In section 9 of the Act in the sub-section (3) for the words Public Demands Recovery Act, 1913 (Act No. III of 1913) the words “the Local Government (Union Parishads) Act, 2009(Act no. LXI of 2009)” shall be substituted.

---

## 6.9 Amendment in Section 13

Amendment of section 13 of the Act No. IXX of 2006. - In the Act No. IXX of 2006 in section 13-

(a) sub-section (1) shall be substituted by the following sub-section (1), namely:-

“(1) Save as otherwise provided by this Act, the provisions of the Evidence Act, 1872 (I of 1872), the Code of Criminal Procedure, shall not be applicable to the proceedings before Village Court and except sections 10 and 11 of the Code of Civil Procedure no other provisions shall be applicable to the proceedings before Village Court.”.

(b) In sub-section (3) the words “part I of the Schedule of” shall be inserted after the word “under” at the second line.

## 6.10 Amendment to incorporate limitations in filing cases

**Insertion of section 13 A in the Act No. IXX of 2006.**- In the Act No. IXX of 2006 after section 13 following new section 13 A shall be inserted, namely:-

**“13A. Limitations of filing cases.**- (1) Notwithstanding anything contained in the Limitation Act any criminal case under the part I of the Schedule shall be instituted within 30 (thirty) days from the date of the occurrence of the crime.

(2) Notwithstanding anything contained in the Limitation Act any civil case under the part II of the Schedule shall be instituted within 60 (sixty) days from the date of the accrual of cause of action.”.

## 6.11 Amendment of section 16 of the Act No. IXX of 2006. - In the Act No. IXX of 2006 in section 16-

(a) in sub-section (1) for the words “District Magistrate” the words “Chief Judicial Magistrate” shall be substituted.

(b) After sub-section (1) following sub-section shall be inserted, namely:-

“(1a) Where the District Judge is of opinion that the circumstances of a case relating to a matter falling under part II of the Schedule and pending before a Village Court are such that- the public interest and the ends of justice demand its trial in a Civil Court he may, notwithstanding anything contained in this Act, withdraw the same from the Village Court and send it to the Civil Court for trial and disposal.”.

## 6.12 Amendment of section 17 of the VC Act

Amendment of section 17 of the Act No. IXX of 2006.-Section 17 of the Act shall be substituted by the following new section 17:

“17. Investigation by Police, etc.-(1) Notwithstanding anything contained in this Act or in any other Law, the Police shall not investigate of a case relates to first part of the schedule without the order of a Magistrate of first class.

(2) If any case related to the first part of the schedule is taken to a criminal court, such court shall send the case with direction to the respective Union Parishad to dispose of the case as per this Act.”

## 6.13 Amendment of the Schedule

A new schedule shall be substituted for the existing schedule which consists of the following:

- 
- i. the contents of the relevant sections of the Penal Code;
  - ii. the amount of money relating to offence is enhanced from TK 25,000 to TK 50,000 and the money claimed or the value of the movable property or value of the immovable property relating to offence in civil cases enhanced from TK 25,000 to TK 50,000; and
  - iii. Part III has been inserted which contains a form of decree on compromise.

### 6.14 Clause on pending cases

Following clause has been inserted in the draft Bill:

**“Pending cases.-** This Act shall not apply to case triable under this Act, which, immediately before the coming into force of this Act, are pending in any Civil or Criminal Court, and such cases shall be disposed of by such Court as if this Act had not been enacted.”.

## 7 Conclusion

The recommendations made in this report can be grossly divided into two parts i.e. short term recommendations and long term recommendations. Short term recommendations can be implemented within a short period and long term recommendations need a long period to be implemented and require an in depth policy analysis and research. The short term recommendations are as follows:

1. The framing of Village Courts Rules under the VC Act, 2006;
2. The amendment of section 2 of the Act;
3. The amendment of section 9 of the VC Act;
4. The amendment of section 13 of the Act; and
5. The amendment of section 16 of the Act.

The long term recommendations:

1. The framing of new Rules as per the amended VC Act as per the recommendations;
2. The amendment to incorporate ADR;
3. The amendment to incorporate VOM;
4. The amendment to enhance power of VC;
5. The amendment to prevent police from investigating cases related to first part of the schedule;
6. The incorporation of the offences stated in first part of the schedule and civil cases in the second part of the schedule in the body of the Act; and
7. The amendment of the schedule.

The draft report has been disseminated among the stake holders particularly to the VC officials, Judicial Magistrates and judges, Advocates, officers belong to administration, police, policy makers like Ministers, Judges of the Supreme Court, Members of Parliament, Chairmen Parliamentary Standing Committees, Office Bearers of SC Bar Association, Attorney General for Bangladesh, Law Commission of Bangladesh, Secretaries to the Government, Legal Academia and members of civil society through workshops, RTD ,FGD and Seminars. A national workshop was also organized on the draft report and the recommendations obtained from the workshop have been incorporated in this Report.

The report disclosed that VC officials should be provided with some honorarium to render justice at VC. Such provision can be incorporated in the Rules giving the power to Government to fix the amount time to time on the availability of budget in this regard. The provision for Court Assistant also can be incorporated in the Rules with the qualification of such Assistant.

If the UP election is made partisan in near future in that case it is to be incumbent to adopt a procedure to elect a penal of members only for village court or like India or Papua New Guinea the authority have to think about the appointment of a judicial officer in the VC by the Judicial Service Commission to uphold the acceptability and neutrality as well as professional excellence of the VC officials. The appropriate monitoring and accountability of VC officials must be ensured in order to make the VC active and successful. By incorporating ADR and restorative justice mechanism in the VC Act the VC would be more effective and able to render justice to the grass root level people; particularly women, disadvantaged and poor. By way of making VC activated the rule of law would be upheld in Bangladesh and an environment would be created to pave the way of development.



***Recommendations of the Workshops and FGDs***

Recommendations of Judicial Officers at Workshops with Judicial Officers on Potentials and Reforms of Village Court

**Gopalganj Workshop 44 held on 24 July 2010 at Gopalganj Judgeship.**

1. An honest and neutral person should be appointed as the Chairman of VC;
2. Law of limitations should be introduced in VC Proceedings;
3. Due to separation of magisterial power rule 12 should be amended;
4. In section 16 of the VC Act the Chief Judicial Magistrate should be substituted for the District Magistrate;
5. Alternative Dispute Resolution should be introduced at VC;
6. The VC Act and Rules should be simplified;
7. Court fee should be enhanced;
8. The provision for Advocate should be introduced at VC; and
9. A peon, process server, bench clerk and sherestadar/ Administrative Officers should be appointed at a VC/ UP.
10. The constitution of VC should be changed in the manner that it should be presided over by a Judicial Magistrate or an Assistant Judge and in case of shortage of judges such judicial officers may perform their duties by way of conducting circuit courts for ½ day. The Chairman of the respective Union Parishad shall remain as a member of the court and there shall be another member who should be a respectable person of the community like Head Teacher, religious leader etc;
11. Law of limitation should be made applicable in the VC proceedings so that time barred cases may not be entertained;
12. The Village Court should be taken out from the subject of Local Government Division of the Ministry of Local Government, Rural Development and Cooperatives and should be placed under the Ministry of Law, Justice and Parliamentary Affairs.
13. There should be a court fee fixed for appeal and revision in the VC Act itself;
14. There should be a budget for the expenditure of VC and should be some remuneration for the VC officials;
15. The registers must be maintained in proper form and should be inspected regularly;
16. A quarterly statement should be sent to the concerned District Judge for civil cases and for criminal cases same should be sent to the concerned Chief Judicial Magistrate;
17. For implementing VC decision instead of following the provisions of the Public Demands Recovery Act, 1913 the Village Court should be given power of issuance of execution warrant like Family Courts and the decision of the VC should be implemented by the VC itself;
18. Advocate should be allowed to appear before a VC; and
19. By amending rule 22 the time limit for executing VC decision should be reduced to 30/45 days instead of 6 months.
20. All necessary registers and forms must be supplied by the government within 1<sup>st</sup> January of each year;
21. The compensation should be recovered through concerned Judicial Magistrate/ Assistant Judge;
22. The time limit for enforcement of a VC decision should be 1 year instead of 6 months as stated in rule 22;
23. Rule 29 should be amended in the light of section 9 (3) of the VC Act, 2006 so that the Chairman of the Village Court may recover the compensation as the arrears of the tax of Union Parishad.



- 
24. The VC officials should have training on VC legal framework;
  25. Forms and registers should be maintained;
  26. Procedure should be maintained; and
  27. The decision should be given on hearing both the parties in open court.

### **Recommendations which might be considered (Important Recommendations):**

1. Law of limitations should be introduced in VC Proceedings;
2. Due to separation of magisterial power rule 12 should be amended;
3. In section 16 of the VC Act the Chief Judicial Magistrate should be substituted for the District Magistrate;
4. Alternative Dispute Resolution should be introduced at VC;
5. The constitution of VC should be changed in the manner that it should be presided over by a Judicial Magistrate or an Assistant Judge and in case of shortage of judges such judicial officers may perform their duties by way of conducting circuit courts for ½ day. The Chairman of the respective Union Parishad shall remain as a member of the court and there shall be another member who should be a respectable person of the community like Head Teacher, religious leader etc.

### **Chittagong Divisional Workshop 45 held on 31 July 2010 at Chittagong.**

1. Pecuniary jurisdiction in civil cases should be enhanced to 50,000/ and environment related minor offences should be included in the first part of the Schedule of the VC Act, 2006;
2. Section 354 (assault or criminal force to woman with intent to outrage her modesty ) and section 448 ( punishment for house-trespass) of the Penal Code, 1860 should be inserted in the first part of the Schedule of the VC Act, 2006;
3. Local appellate authority should be created with Assistant Commissioner (Land) or any other Assistant Commissioner;
4. The time limit for filing written objection as per rule 13 of the VC Rules, 1976 should be 10 days instead of 3 days;
5. The post of a Court Assistant should be created; and
6. The functions of village courts should be monitored.
7. Section 6 of the VC Act, 2006 should be amended and any party to a case should be given an opportunity that at the option of such party the territorial jurisdiction of a VC could be changed i.e. the case can be heard at a VC constituted in a different Union;
8. Pecuniary Jurisdiction of VC should be enhanced up to 1,50,000-2,00,000 TK. ;
9. Section 8 of the VC Act, 2006 should be amended and provision should be incorporated that appeal should lie in all cases irrespective of the ratio of vote in taking decision;
10. There should be a Court Room for trial of VC cases since for administration of oath there should be a formal venue;
11. On making necessary amendment of rule 14 (3) of the VC Rules, 1976 it should be made clear who should conduct an investigation and how such investigation should be made;
12. Section 16 of the VC Act, 2006 should be amended and instead of District Magistrate the words Chief Judicial Magistrate should be inserted; and
13. The form 11 of the Village Courts Rules, 1976 should be amended and the criminal cases should be sent to the Chief Judicial Magistrate from a village court instead of nearest Magistrate. Chairman should be given power of implementing the decision of VC directly by amending section 9 of the VC Act;
14. The decision of VC should be enforced within one month instead of 6 months on amending rule 22 of the VC Rules, 1976;
15. The fee for inspection of record should be made 5 Tk instead of 75 paisa on amending rule 23 of the VC Rules, 1976;
16. The VC should be empowered so that it can recover the fine imposed by itself with necessary amendment

- 
- of rule 30 of the VC Rules, 1976; and
17. Regular inspection of VC by the superior authority should be ensured.
  18. There should be a permanent structure for VC;
  19. Forms and registers should be preserved properly;
  20. The Chief Judicial Magistrates should be empowered to monitor and evaluate Village Courts;
  21. There should be provision for revision up to District Judge on legal issues;
  22. Civil and criminal jurisdiction should be enhanced up to 50,000/ TK;
  23. The dispute should be resolved within 45 days;
  24. Basic training on law should be provided to the VC officials; and
  25. A law officer should be appointed for the assistance of the Chairman of VC with legal background/ degree.
  26. Mass awareness should be created;
  27. Infrastructure for Village Court should be developed;
  28. Training for VC officials should be provided;
  29. Time limit for disposal of cases should be set;
  30. Provision for honorarium for VC officials should be introduced;
  31. There should be common code of conduct for VC officials;
  32. VC Rules should be framed as per the need of the Present Act;
  33. There should be a guideline for transfer of cases from VC;
  34. Language of the booklet should be easy and simple; and
  35. Sufficient staffs should be appointed for VC.
  36. The guide should explicitly state:
    - a. that who should be the beneficiaries of the VC;
    - b. that for what criminal and civil matters people can seek redress of VC;
    - c. the constitution of VC in a very easy language; and
    - d. that how the jurisdiction of VC can be availed.

### **Recommendations which might be considered (Important Recommendations):**

4. 1. Pecuniary jurisdiction in civil cases should be enhanced to 50,000/ and environment related minor offences should be included in the first part of the Schedule of the VC Act, 2006;
4. Section 354 (assault or criminal force to woman with intent to outrage her modesty ) and section 445 ( punishment for house-trespass) of the Penal Code, 1860 should be inserted in the first part of the Schedule of the VC Act, 2006;
5. There should be a Court Room for trial of VC cases since for administration of oath there should be a formal venue;
6. On making necessary amendment of rule 14 (3) of the VC Rules, 1976 it should be made clear who should conduct an investigation and how such investigation should be made;
7. The form 11 of the Village Courts Rules, 1976 should be amended and the criminal cases should be sent to the Chief Judicial Magistrate from a village court instead of nearest Magistrate. Chairman should be given power of implementing the decision of VC directly by amending section 9 of the VC Act;
8. The decision of VC should be enforced within one month instead of 6 months on amending rule 22 of the VC Rules, 1976;
9. Infrastructure for Village Court should be developed;
10. Training for VC officials should be provided;
11. The guide should explicitly state:

- 
- a. that who should be the beneficiaries of the VC;
  - b. that for what criminal and civil matters people can seek redress of VC;
  - c. the constitution of VC in a very easy language; and
  - d. that how the jurisdiction of VC can be availed.

### **Moulvibazar Workshop 46 held on 21 August 2010 at Srimangal, Moulvibazar.**

1. The present structure of the Village Court should be changed and there should be a permanent village court the member of which shall be elected during UP election only for the purpose of village court;
2. The Jurisdiction of criminal cases should be extended and the compoundable offences under the Code of Criminal Procedure, 1898 should be dealt with by Village Court; and
3. There should be provisions for serving summons through registered post with acknowledgement due;
4. Section 16 (1) of the VC Act should be amended and Chief Judicial Magistrate should be empowered to transfer the criminal cases from VC instead of the District Magistrate and there should be also provisions for transfer of civil cases shown in part II of the Schedule of the VC Act;
5. In Rule 21 (2) of the VC Rules, 1976 Senior Judicial Magistrate should be substituted for the words Sub Divisional Magistrate;
6. In rule 14 (1) the adjournment time limit should be 7 working days instead of 7 days; and
7. It should be specified in rule 14 (3) that the VC can conduct a local investigation in a case either on its own accord or on the application of any party to the case.
8. The VC should be directly entrusted with the enforcement power instead of filing a certificate case under the PDR Act through UNO by amending section 9 of the VC Act;
9. Copy of the case record or register should be provided through supplying photocopy of the same signed by the UP Chairman or Chairman of VC and necessary amendments of the Rules should be made in this regard;
10. The VC itself should be empowered to recover the fine imposed by it;
11. Some cases under the Specific Relief Act, 1877 should be vested on the VC like specific performance of contract;
12. A half yearly or quarterly statement regarding VC should be sent from each Union Parishad to the District Judge besides UNO; and
13. There should be provision for monthly statement of VC to the UNO which should be produced before the Upazila Coordination Meeting.
14. The rules should be drafted in easy language;
15. There should be specific sitting time for VC;
16. There should be commentary of VC Law in the guides;
17. The sections described in part I of the schedule of the VC Act should be defined and written in Bangla;
18. The disputes stated in the second part of the schedule of the VC Act should be defined and explained;
19. The VC can be included in the text book at the secondary level of education;
20. There should be citizen charter for VC which should be hanged in a conspicuous part of the UP and other important places; and
21. It should be clearly explained the reference guide that why people should go to VC and it should be posted at UP and other important places in the form of picture.

### **Recommendations which might be considered (Important Recommendations):**

1. The present structure of the Village Court should be changed and there should be a permanent village court the member of which shall be elected during UP election only for the purpose of village court;
2. The Jurisdiction of criminal cases should be extended and the compoundable offences under the Code of Criminal Procedure, 1898 should be dealt with by Village Court; and

- 
3. There should be provisions for serving summons through registered post with acknowledgement due;
  4. Section 16 (1) of the VC Act should be amended and Chief Judicial Magistrate should be empowered to transfer the criminal cases from VC instead of the District Magistrate and there should be also provisions for transfer of civil cases shown in part II of the Schedule of the VC Act;
  5. The VC should be directly entrusted with the enforcement power instead of filing a certificate case under the PDR Act through UNO by amending section 9 of the VC Act;
  6. Copy of the case record or register should be provided through supplying photocopy of the same signed by the UP Chairman or Chairman of VC and necessary amendments of the Rules should be made in this regard;
  7. The VC itself should be empowered to recover the fine imposed by it;
  8. Some cases under the Specific Relief Act, 1877 should be vested on the VC like specific performance of contract;
  9. A half yearly or quarterly statement regarding VC should be sent from each Union Parishad to the District Judge besides UNO;
  10. There should be provision for monthly statement of VC to the UNO which should be produced before the Upazila Coordination Meeting; and
  11. There should be citizen charter for VC which should be hanged in a conspicuous part of the UP and other important places.

#### **Kishoregonj Workshop 47 Held On 28 August 2010 at Kishoregonj.**

1. There should be a provision for hearing the revision on criminal matters by a Judicial Magistrate in section 4 (2) of the VC Act
2. Paragraph (Ga) section 3 (2) and section 13 (3) of the VC Act are conflicting with each other and thus necessary amendment should be brought to resolve the conflict
3. Compensation awarding power of VC Should be enhanced to 50,000 TK from existing 25,000/ TK by amending section 7 of the VC Act
4. All orders and decisions of VC should be made appealable irrespective of the ratio of the votes on which the decision is taken
5. There should be honorarium for VC officials
6. The VC should be vested with the power of attaching movables to realize the compensation
7. Execution power of VC decision should be vested with the VC
8. Rule 23 should be amended and instead of 75 paisa it should be 5 TK
9. Judicial officers should visit VC at least once in a year
10. Sl. no. 3 should be deleted from part II of the Schedule of the VC Act
11. Under section 16 of the VC Act civil cases also should be liable to be made transfer
12. For deciding family dispute or dispute concerning a woman there should be at least one woman member in the constitution of VC.

#### **Recommendations which might be considered (Important Recommendations):**

12. Paragraph (Ga) section 3 (2) and section 13 (3) of the VC Act are conflicting with each other and thus necessary amendment should be brought to resolve the conflict
13. Judicial officers should visit VC at least once in a year
14. For deciding family disputes or disputes concerning women there should be at least one woman member in the constitution of VC.

#### **Barguna Workshop 48 held on 4 September 2010 at Borguna Circuit House.**

1. Magistrate should be given revisional power for criminal matters

- 
2. There should be provision for mediation at the pretrial stage
  3. There should also be provision for after trial mediation
  4. Immediately Rules should be framed under section 20 of the VC Act, 2006
  5. The VC Act should be amended in the line of Code Criminal Procedure Amendments of 2009
  6. Section 11 of the VC Act should be amended and criticism of the decision of the court in front of it should be made contemptuous
  7. For avoidance of summons power of arrest should be vested with the Village Police
  8. The power of entertaining petition should be give to the UP Member also
  9. For civil cases fees should be re fixed at TK 20/ and for criminal cases fees should be TK 10
  10. Decree form should be signed by all members of the VC
  11. Time limit should be fixed for disposal of cases
  12. VC statements should be sent to the concerned civil and criminal court.

### **Recommendations which might be considered (Important Recommendations):**

1. There should be provision for mediation at the pretrial stage
2. There should also be provision for after trial mediation
3. Immediately Rules should be framed under section 20 of the VC Act, 2006
4. The VC Act should be amended in the line of Code Criminal Procedure Amendments of 2009
5. Section 11 of the VC Act should be amended and criticism of the decision of the court in front of it should be made contemptuous
6. Decree form should be signed by all members of the VC

### **Key Recommendations Obtained from the Workshops with Judicial Officers on the Potentials and Reforms of Village Court**

1. The VC Act should be amended in the line of Code of Criminal Procedure (Amendments ) Act of 2009.
2. Immediately Rules should be framed under section 20 of the VC Act, 2006 in view of the separation of magisterial powers.
3. Section 16 (1) of the VC Act should be amended and Chief Judicial Magistrate should be empowered to transfer the criminal cases from VC instead of the District Magistrate and there should be also provisions for transfer of civil cases shown in part II of the Schedule of the VC Act.
4. The Copy of the case record or register should be provided through supplying photocopy of the same signed by the UP Chairman or Chairman of VC and fees for furnishing copies should be enhanced.
5. A half yearly or quarterly statement regarding VC should be sent from each Union Parishad to the District Judge/ Chief Judicial Magistrate and there should be provision for monthly statement of VC to the UNO which should be produced before the Upazila Coordination Meeting.
6. There should be citizen charter for VC which should be hanged in a conspicuous part of the UP and other important places.
7. Paragraph (Ga) section 3 (2) and section 13 (3) of the VC Act are conflicting with each other and thus necessary amendment should be brought to resolve the conflict.
8. For deciding family disputes or disputes concerning women there should be at least one woman member in the constitution of VC.
9. There should be provision for mediation at the pretrial and after trial stages.
10. Section 11 of the VC Act should be amended and criticism of the decision of the court in front of it should be made contemptuous.
11. Decree form should be signed by all members of the VC.

---

## Recommendations of the VC Officials

- VC is a good way to win the villagers heart. So VC is a prime concern of the UPs;
- Necessary orientation, books/booklets, forms and other logistics are needed for successful running the VCs and all of those should be provided from the project;
- There should be court room of VC;
- Regular monitoring, supervision and reporting to strengthen the VCs are required and in this regard active guidance, training and other supports from administrative and formal court officials like; Judges, Magistrates would be useful;
- In addition to the prescribed forms the non prescribed forms introduced by different NGO's should be introduced for better monitoring and smooth functioning of VC;
- Remuneration for the Village Court Officials should be given for the disposal of each cases ;
- An annual budget of minimum 20,000/TK should be allocated for successful running of VC activities e.g. photo copies of documents, maintaining registers, serving notices etc.;
- A budget for logistic support and computer also demanded ;
- Mediation/ ADR should be included in the VC Act;
- Domestic violence, family disputes and the function of the Arbitration Council under the Muslim Family Laws Ordinance, 1961 should be incorporated in the VC Act;
- Peoples are not sufficiently aware about the procedure of the VC and they don't have the education to draft petition to be submitted in VCs. Therefore, a court assistant should be provided for every Union in order to facilitate the function of VC as well as to help illiterate people in filing their petitions at VCs; and
- The pecuniary jurisdiction of VC should be enhanced to 1,00,000/ TK.

## Important Recommendations for effective VC obtained from field visits

- An oath plate or format could be sent to all VCs;
- According to rules all forms should be sent to the UPs immediately;
- The non prescribed forms (practiced by MLAA) need to be distributed to 500 Ups for better performance of VCs;
- Timely transmission of records from the CJM Court to the VC should be ensured;
- The existing monitoring, supervision and reporting system prescribed by law should be followed;
- The project can allocate or support to establish 'Court Room' for all the UPs under the Project;
- Some budget should be allocated for each UP for furniture and logistics;
- A computer can be allotted to each UP for the use of the VC;
- Training should be provided to the VC officials on VC Act, rules and procedures;
- Mass campaign should be launched to aware the people on VC;
- An honorarium should be fixed for the Chairman and the Members of the VC for successful disposal of each case;
- Advocacy at national level need to amend the Act to include Salish, domestic violence, family disputes, increase pecuniary jurisdiction of VC to 1,00,000/ TK and ensure execution of VC's decision by itself; and
- The project should think about the sustainability of the VCs.
- The VC officials, administrative and judicial officers including police officers should be provided sufficient legal education on the legal framework of VC and such initiative of visiting VCs should be an ongoing process;
- The aforesaid persons should be provided with the VC reference guide book which could be a ready reference for conducting VC and deal with the VC;



- Close follow up of the activities of the visited UPs should be made on a routine basis and report of such follow up should be submitted eventually;
- LGD of MOLGRD & C can issue a circular to the 500 UPs of the Project with an effect that all the Chairmen of the UP should sit in a VC at least once in a week and failure to do so could be treated as an offence under section 34 (4) of the Local Government (Union Parishad) Act, 2009 and consequently s/he could be suspended or removed from his office;
- LGD of MOLGRD & C can issue a circular to all UNOs to ensure half yearly return from the UPs regarding the activities of VC and simultaneously the LGD can issue circular to the 500 UPs for submitting the half yearly return to the respective UNO under rule 31 of the VC Rules, 1976;
- In order to ensure the proper enforcement of VC decisions notice of UP Chairmen can be drawn regarding the provisions of section 9 (3) of the VC Act, 2006 and section 68 of the Local Government (Union Parishad) Act, 2009 according to which the Chairman of the VC is empowered to realize the compensation ordered by the VC in the same manner as arrear tax of the Union Parishad and in such a case the UP or any of its members or officers can confiscate and disposed of or attach or sell any movable or immovable property of the concerned person;
- LGD of MOLGRD & C can allocate a budget specifically for VC of each UP under the project area;
- Rules under the VC Act, 2006 should be framed immediately;
- A court assistant should be provided to each UP under the project area;
- There should be a provision for honorarium for VC official for conducting the function of VC; and
- Law and Justice Division of the Ministry of Law, Justice and Parliamentary Affairs may be requested to issue a circular in consultation with the Supreme Court to instruct the District Judge/Chief Judicial Magistrate/ Additional Chief Judicial Magistrate to inspect the UPs for monitoring the judicial function of VC at least once in a year.

### **Recommendations obtained from the Consultative Workshop on the Draft Report of the Review of Legal Framework held on 16.03.2011 at the Country Office, UNDP, Bangladesh:**

1. The issue of enhancement of the pecuniary jurisdiction of VC would be carefully considered and a reasonable amount would be fixed in consulting the stakeholders and policy makers.
2. In the constitution of VC participation of woman shall be ensured.
3. Women's access to VC shall be given due importance and in this regard necessary legal reform shall be suggested in the report.
4. Whether appeal should be restricted or restriction should go is to be determined after getting more expert opinion as well as opinion from the stakeholders.
5. Whether power of police in investigating VC triable cognizable cases is to be determined carefully in consultation with Police and other relevant stakeholders as well as policy makers.
6. The domestic violence should be incorporated in the report in order to empower VC to try such offences as far as practicable.

### **Recommendations obtained from the National Technical Consultation on Review of Legal framework of Village Court held in BRAC INN on 20 April 2011:**

- i. The concept of restorative justice should be introduced in VC. Rule 33 does not support restorative justice modality and thus it should be changed;
- ii. Recommendation made in the draft report for constituting an arbitration council for pretrial mediation may cause complicity. Therefore, it should be redrafted.
- iii. Mediation process should involve participation of community people and open discussion.
- iv. If any party fails to nominate VC member on time in that case Chairman should nominate such member.



- 
- v. In case of tie in decision there should not be any casting vote of Chairman rather the court should be adjourned for a future day when the presence of all the five member should be ensured.
  - vi. The role of Chairman/ member should be specified in the VC Act.
  - vii. Proposed amendment of section 13 (3) can be suggested with addition of the words “first part of the schedule” after the words “in a case instituted under”.
  - viii. Section 19 of the Act can remain the same and proposed amendment of section 19 can be inserted as new section 19A.
  - ix. Two female members for constituting a VC should be nominated one from elected female UP members and other from the community members.
  - x. Preventing police from investigating VC triable cognizable offence needs extensive discussion with all stakeholders.
  - xi. The amendment proposals made in section 5.5. of the draft report will cause unnecessary delay and will hamper the authority of VC.

**Recommendations obtained from the National Consultation on the Village Courts Act, 2006: Challenges and Way Forward held in the Officers’ Club, Dhaka on 30 July 2011:**

1. In case of failure of nomination of VC members by any party in that case a different provision should be introduced without empowering Chairman to constitute VC;
2. Instead of introducing three separate procedure, e.g. settlement conference, mediation and trial, one procedure comprising mediation and trial should be introduced at VC;
3. Concentration of too much power in UP Chairman should be avoided;
4. The Schedule of the VC Act, 2006 states only some sections of the Penal Code and the Cattle-Trespass Act which are not easily understandable to people. In order to make those undestandable to people the contents of the sections should be provided in the Schedule;
5. In order to avoid conflict of legal provisions between one year limitation period in filing a case at VC for dispossession from a land and six month limitation period provided uner section 9 of the Specific Relief Act, 1877 for the same nature of suit, the VC Act should be amended and a standard period of limitation should be introduced for filing all VC cases;
6. Non applicability of the Evidence Act, 1872, the Code of Criminal Procedure, 1898 and the Code of Civil Procedure, 1908 should be duly addressed in the draft Bill so that the VC procedure and proving a case before VC should not be obstructed;
7. The draft Bill should be redrafted reexamining the issues of jurisdiction, composition, effectiveness and legal flaws.
8. The VC should be empowered to enforce its decision; and
9. The pecuniary jurisdiction of VC should be enhanced.

---

## Annexure-B

---

### *English Version of the Village Courts Act, 2006*

## **The Village Courts Act, 2006**

[Act No. 19 of 2006]

[9 May 2006 AD  
26th Baishakh, 1413 B.S.]

An Act to provide for the constitution of village courts for easy and speedy trial of certain cases and disputes, under each union of the country.

Whereas it is expedient and necessary to provide for the constitution of village courts for the easy and speedy trial of certain cases and disputes under the jurisdiction of each union of the country;

Therefore, it is hereby enacted as follows:

### **1. Short title, commencement and application.-**

- (1) This Act shall be called the Village Courts Act, 2006.
- (2) It shall come into force at once.
- (3) It shall be applicable only to the areas within the limits of the jurisdiction of a union.

### **2. Definition.-** In this Act, unless there is anything repugnant in the subject or context,

- (a) “Cognizable offence” means cognizable offence as defined under the Code of Criminal Procedure;
  - (b) “Union” means union as defined in clause (26) of section 2 of the Local Government (Union Parishads) Ordinance, 1983 (Ordinance No. LI of 1983);
  - (c) “Union Parishad” means Union Parishad as defined in clause (27) of section 2 of the Local Government (Union Parishads) Ordinance, 1983 (Ordinance No. LI of 1983);
  - (d) “Assistant Judge having jurisdiction” means an Assistant Judge within the limits of whose jurisdiction the union concerned is situated, and where more Assistant Judges have such jurisdiction, the most junior of such Assistant Judges;
  - (e) “Village Court” means village court constituted under section 5;
  - (f) “Chairman” means Chairman of the Village Court;
  - (g) “Schedule” means schedule of this Act;
  - (h) “Penal Code” means the Penal Code, 1860 (Act XLV of 1860)
  - (i) “Civil Procedure” means the Code of Civil Procedure, 1908 (Act V of 1908);
  - (j) “Prescribed” means prescribed by rules;
  - (k) “Party” includes such person whose presence is deemed necessary for proper adjudication of disputes and whom the Village Court impleads as a party to the dispute,
- (1) “Criminal Procedure” means the Code of Criminal Procedure, 1898 (Act V of 1898);
  - (m) “Rules” means the Rules framed under this Act;
  - (n) “Decision” means a decision of the Village Court.

---

**3. Cases triable by Village Court.-** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) or in the Code of Civil Procedure, 1908 (Act V of 1908), all cases relating to offences specified in part I of the schedule and to matters specified in part II thereof shall, save as otherwise provided hereunder, be triable by Village Courts, and no civil or criminal court shall have jurisdiction to try any such case or suit.

(2) A Village Court shall not try a case relating to an offence specified in part I of the schedule, if the accused had previously been convicted of a cognizable offence or a case relating to any matter specified in part II of the schedule if

- (a) the interest of a minor is involved in the suit;
- (b) provision of arbitration has been made in a contract between the parties to the dispute;
- (c) the Government or a local authority or a public servant acting in the discharge of his duty is a party to the dispute;

(3) The provisions of sub-section (1) shall not be applicable to a suit or proceeding to establish a title to any immovable property in respect of which an order for delivery of possession has been made by a Village Court or to recover possession thereof.

**4. Application for constitution of a Village Court.—** (1) Where a case is triable under this Act by a Village Court, a party to the dispute may, in the prescribed manner apply to the Chairman of the Union Parishad concerned for the constitution of a Village Court for the trial of the case and the Chairman shall, unless for reasons to be recorded in writing, he rejects the application, proceed to constitute, in the prescribed manner, a Village Court for the purpose.

(2) Any person aggrieved by an order of rejection under subsection (1) may prefer in the prescribed manner and within the prescribed time, an application for revision to the Assistant Judge having jurisdiction.

**5. Village Courts, their composition etc.—** (1) A Village Court shall consist of a chairman and two members to be nominated by each of the parties to the dispute;

Provided that one of the two members to be nominated by each party shall be a member of the Union Parishad concerned.

(2) The Chairman of the Union Parishad shall be the Chairman of the Village Court, but where he is, for any reason, unable to act as chairman or his impartiality is challenged by any party to the dispute, any member of the Union Parishad other than those mentioned under sub-section (1) appointed in the prescribed manner, shall be the Chairman of the Village Court.

(3) If either party to the dispute consists of more than one person, the Chairman shall call upon the persons constituting the party to nominate the two members on their behalf and if they fail so to nominate, shall authorise any one of such persons to do so and thereupon the person so authorised shall nominate such members.

(4) Notwithstanding anything contained in sub-section (1) any party to the dispute with the permission of the Chairman, may nominate any person other than the members of the Union Parishad, members of the Village Court.

(5) Notwithstanding anything contained in other provisions of this section where members cannot be nominated within the prescribed time, the Village Court shall be deemed to have been constituted without such members and it shall be legally competent to continue with the proceedings.

**6. Jurisdiction of Village Courts, etc.—** (1) Subject to the provisions of sub-section (2), a Village Court shall be constituted and shall have the jurisdiction to try a case when the parties to the dispute ordinarily reside within the limits of the union in which the offence has been committed or the cause of action has arisen.

(2) Where one of the parties to a dispute ordinarily resides, and the offence has been committed or the

cause of action has arisen, within the jurisdiction of one union and the other party ordinarily resides within the jurisdiction of another union, then Village Court may be constituted in the union in which the offence has been committed, or as the case may be, the cause of action has arisen, but each party shall have the right to nominate, if it so chooses, its representatives from its own union.

**7. Powers of the Village Court.**- Save as otherwise provided in this Act, a village court shall have power only to pass order to pay compensation of taka not exceeding twenty five thousand in respect of offences specified in part I of the schedule.

(2) In a suit relating to a matter specified in part II of the schedule the Village Court shall have power to order payment of money upto the amount mentioned there in respect of such matter of delivery of property or possession to the actual owner thereof.

**8. Finality of the decision of Village Courts and appeal.**- (1) If the decision of a Village Court, is unanimous or by a majority of four to one (4:1), or by a majority of three to one (3:1) in presence of four members, the decision shall be binding on the parties and shall be enforceable in accordance with the provisions of this Act.

(2) If the decision of a Village Court is by a majority of three to two (3:2) any party aggrieved may, within thirty days of the decision, may prefer appeal in the prescribed manner,-

(a) if the case relates to an offence specified in Part I of the Schedule, to the Magistrate, first class having jurisdiction and

(b) if the case relates to a matter specified in Part II of the Schedule, to the Assistant Judge having jurisdiction.

(3) In the case of appeal under subsection (2) the Magistrate or as the case may be, the Assistant Judge, if satisfied that there has been a failure of justice, may set aside or modify the decision, or direct that the dispute be referred back to the Village Court for reconsideration.

(4) Notwithstanding anything contained in any other law for the time being in force, any matter decided by a Court in accordance with the provisions of this Act shall not be tried in any Court, including a Village Court.

**9. Enforcement of decrees.**-(1) Where a Village Court decides to award compensation to a person or to order the delivery of property or possession it shall pass a decree in such form and in such manner as may be prescribed, and shall enter the particulars thereof in the prescribed register.

(2) If any money is paid or any property or possession is delivered in the presence of the Village Court in satisfaction of the decree, it shall enter the fact of payment or delivery, as the case may be, in the aforesaid register.

(3) Where a decree relates to payment of compensation and the decretal amount is not paid within the prescribed time, the Chairman of the Village Court shall forward the same to the Union Parishad concerned which shall proceed to recover it in the same manner as arrear tax of the Union Parishad under the Public Demands Recovery Act, 1913 (Act III of 1913) which shall be paid to the decree-holder.

(4) Where the satisfaction of a decree can be had otherwise than by payment of compensation, the decree may be presented for execution to the Court of the Assistant Judge having

jurisdiction and such court shall thereupon proceed to execute the decree as if it were a decree passed by itself.

(5) A Village Court may, if it thinks fit, direct that the amount of compensation be paid in such instalments as it may fix.

**10. Power of Village Court to summon witnesses, etc.**- (1) A Village Court may issue summons to any person to appear and give evidence, or to produce or cause the production of any document:

---

Provided that-

(a) no person who is exempt from personal appearance in court under sub-section (1) of section 133 of the Code of Civil Procedure shall be required to appear in person;

(b) a Village Court may refuse to summon a witness or to enforce a summons already issued against a witness when in the opinion of the Court the attendance of the witness cannot be produced without such delay, expense or inconvenience as in the circumstances would be unreasonable;

(c) a Village Court shall not require any person living beyond its jurisdiction to give evidence or to produce or cause the production of a document unless such sum of money is deposited for payment to him as the Court would think sufficient for defraying his travelling and other expenses;

(d) a Village Court shall not require any person to produce any secret document or unpublished official record relating to any affairs of the State, or permit any person to give any evidence derived from such secret document or unpublished official record except with the permission of the officer at the head of the department concerned.

(2) If any person to whom a Village Court has issued summons to appear and give evidence or to produce or cause the production of any document before it willfully disobeys such summons, the Court may take cognizance of such disobedience, and, after giving such person an opportunity to explain, sentence him to a fine not exceeding Taka five hundred.

**11. Contempt of Village Courts.-** A person shall be guilty of contempt of a Village Court if he, without lawful excuse,-

(a) offers any insult to the Court or any member thereof by filthy language, intimidation, attacking or offensive behaviour while the Court is functioning as such; or

(b) causes any interruption in the work of the Court; or

(c) fails to produce or deliver a document when ordered by the Court to do so; or

(d) refuses to answer any question of the Court which he is bound to answer; or

(e) refuses to take oath to state the truth or to sign any statement made by him when required by the Court to do so.

(f) In case of the offence under sub-section (1) the Village Court may, without any complaint having been made to it, try such person for such contempt and sentence him to a fine not exceeding five hundred Taka.

**12. Recovery of fine.-** (1) Where a Village Court imposes a fine under section 10 and 11 and such fine is not immediately paid, it shall record an order stating the amount of fine imposed and the fact that it has not been paid, and shall forward the same to the Magistrate having jurisdiction with the request for recovery.

(2) Upon receipt of the request under sub-section (1) the Magistrate shall proceed to recover the same under the provision of the Code of Criminal Procedure as if such fine were imposed by him and in default of payment of such fine he may award sentence to the person concerned to imprisonment.

(3) All fines under sections 10, 11, or under sub-section (2) recovered shall form part of funds of the Union Parishad.

**13. Procedure.-** (1) Save as otherwise provided by this Act, the provisions of the Evidence Act, 1872 (I of 1872), the Code of Criminal Procedure, and the Code of Civil Procedure, shall not apply to proceedings before any Village Court.

(2) Sections 8, 9, 10 and 11 of the Oaths Act, 1873 (Act X of 1873), shall apply to all proceedings before Village Courts.

---

(3) For the prosecution of a public servant for an offence triable under this Act, previous sanction of the appointing authority shall be required if the public servant raises plea that the offence alleged to have been committed by him was committed while acting or purporting to act in the discharge of his official duties.

**14. Restriction on appearance through counsel.**- (1) Notwithstanding anything contained in any other law, no party shall be permitted to engage any legal practitioner to conduct his case before any Village Court.

**15. Appearance of Government servant, pardanashin old lady, physically disabled person through authorised representative.**- (1) If a person required to appear before a Village Court is a Government servant and he raises the plea with the recommendation of his superior officer to the effect that his personal appearance will hamper his official duties, the court may permit his duly authorised agent to appear before the Village Court on his behalf.

(2) If a person required to appear before a Village Court is a Pardanashin lady, or an old woman or physically disabled person who is unable to appear before the court to give evidence, the Court may permit her or him to be represented by a duly authorised agent.

(3) An agent appointed under subsection (1) and (2) shall not be entitled to receive any remuneration.

**16. Transfer of certain cases.**– (1) Where the District Magistrate is of opinion that the circumstances of a case relating to a matter falling under Part I of the Schedule and pending before a Village Court are such that–the public interest and the ends of justice demand its trial in a Criminal Court he may, notwithstanding anything contained in this Act, withdraw the same from the Village Court and send it to the Criminal Court for trial and disposal.

(2) A Village Court may, if it is of the opinion that in a case relating to a matter under sub-section (1) and pending before it the ends of justice demand a punishment for the accused, forward the case to the Criminal Court for trial and disposal.

**17. Investigation by police.**– Nothing in this Act shall prevent the police from investigating a cognizable case by reason of the fact that the case relates to an offence specified in Part I of the Schedule, but if any such case is taken to a Criminal Court, such Court may, if it thinks fit, direct that it be referred to a Village Court constituted under this Act.

**18. Pending cases.**– This Act shall not apply to cases triable under this Act which, immediately before the coming into force of this Act, are pending in any Civil or Criminal Court, and such cases shall be disposed of by such Court as if this Act had not been enacted.

**19. Power to exempt.**- The Government may, by notification in the official Gazette, exempt any area or areas, or any case or class of cases, or any community from the operation of all or any of the provisions of this Act.

**20. Power to make rules.**- The Government may, by notification in the official Gazette, make rules to carry into effect the provisions of this Act.

**21. Repeal and savings.**- (1) The Village Courts Ordinance, 1976 (Ord. No. LXI of 1976) hereinafter referred to as the repealed Ordinance, is hereby repealed.

(2) Notwithstanding the repeal of the Ordinance

(a) The pending cases and the execution of the decrees shall be disposed of as if this Act has not been enacted.

(b) Until repealed or modified all the rules framed which are not inconsistent with the provisions of this Act shall be applicable.

---

## Schedule

### Part I

### Criminal cases

1. Sections 143 and 147 of the Penal Code (Act XLV of 1860), read with the Third or the Fourth clause of section 141 of the Code, when the common object of the unlawful assembly is to commit an offence under section 323 or 426 or 447 of that Code, and when not more than ten persons are involved in the unlawful assembly.
2. Sections 160, 334, 341, 342, 352, 358, 504, 506 (first part), 508, 509 and 510 of the Penal Code.
3. Sections 379, 380 and 381 of the Penal Code, when the offence committed is in respect of cattle and the value thereof does not exceed twenty five thousand taka.
4. Sections 379, 380 and 381 of the Penal Code, when the offence committed is in respect of any property other than cattle, and the value of such property does not exceed twenty five thousand taka.
5. Sections 403, 406, 417 and 420 of the Penal Code, when the amount in respect of which the offence is committed does not exceed twenty five thousand taka.
6. Section 427 of the Penal Code, when the value of the property involved does not exceed twenty five thousand taka.
7. Sections 428 and 429 of the Penal Code, when the value of the cattle does not exceed twenty five thousand taka.
8. Sections 24, 26 and 27 of the Cattle-trespass Act, 1871 (Act I of 1871).
9. Attempts to commit or the abetment of the commission of any of the above offences.

### Part II

### Civil Suits

1. Suit for the recovery of money due on contracts, receipts or other documents.	When the amount claimed or the price of movable property or the value of immovable property involved does not exceed twenty five thousand taka.
2. Suit for the recovery of movable property or for the value thereof.	
3. Suit for the recovery of possession of immovable property within one year of dispossession.	
4. Suit for compensation for wrongfully taking or damaging movable property.	
5. Suit for damages by cattle trespass.	
6. Suit for recovery of wage and compensation of agricultural labour.	



## Annexure-C

### List of Interviewees:

Sl. No.	Name of Interviewees	Designation and Organization	Date of Interview
1	Prof. Dr. Shah Alam,	Chairman, Law Commission	23.03.2011
2	Prof. Dr. Sumaiya Khair	Chairperson, Law Department/DU	21.03.2011
3	Advocate Rahmat Ali	Chairman, Parliamentary Standing Committee on the Ministry of LGRD & C	22.03.2011
4	Mr. A.K. M. Hussain ,	Joint Secretary Legislative Support Service, Bangladesh Parliament Secretariat	22.03.2011
5	Mr. Fazlul Huq	Secretary, Madaripur Legal Aid Association	10.04.2011

## Annexure-D

### Draft Village Courts (Amendment) Bill, 2011

[খসড়া]

জাতীয় সংসদে উত্থাপনীয়

বিল নং---/২০১১

গ্রাম আদালত আইন, ২০০৬ (২০০৬ সালের ১৯ নং আইন) এর কতিপয় বিধানের অধিকতর সংশোধনকল্পে প্রণীত বিল যেহেতু নিম্নবর্ণিত উদ্দেশ্যসমূহ পূরণকল্পে গ্রাম আদালত আইন, ২০০৬ এর কতিপয় বিধানের অধিকতর সংশোধন সমীচীন ও প্রয়োজনীয়; সেহেতু এতদ্বারা নিম্নরূপ আইন করা হইল:-

১। সংক্ষিপ্ত শিরোনাম।- এই আইন গ্রাম আদালত (সংশোধন) আইন, ২০১১ নামে অভিহিত হইবে।

২। গ্রাম আদালত আইন, ২০০৬ (২০০৬ সনের ১৯নং আইন) এর ২ ধারার সংশোধন।-গ্রাম আদালত আইন, ২০০৬ (অতঃপর ২০০৬ সনের ১৯নং আইন হিসাবে উল্লিখিত) এর ২ ধারার পরিবর্তে নিম্নরূপ ২ ধারা প্রতিস্থাপিত হইবে, যথা:-

“২। সংজ্ঞা।-বিষয় বা প্রসংগের পরিপন্থী কোন কিছু না থাকিলে, এই আইনে-

(ক) “আমলযোগ্য অপরাধ” অর্থ ফৌজদারী কার্যবিধিতে সংজ্ঞায়িত Cognizable Offence;

(খ) “ইউনিয়ন” অর্থ স্থানীয় সরকার (ইউনিয়ন পরিষদ) আইন, ২০০৯ (২০০৯ সনের ৬১ নং আইন) এর ধারা ২ এর অনুচ্ছেদ (৫) এ সংজ্ঞায়িত ইউনিয়ন;

(গ) “ইউনিয়ন পরিষদ” অর্থ স্থানীয় সরকার (ইউনিয়ন পরিষদ) আইন, ২০০৯ (২০০৯ সনের ৬১ নং আইন) এর ধারা ২ এর অনুচ্ছেদ

(৬) এ সংজ্ঞায়িত ইউনিয়ন পরিষদ;

(ঘ) “এখতিয়ার সম্পন্ন সহকারী জজ” অর্থ যে সহকারী জজের এখতিয়ারভুক্ত সীমানার মধ্যে সংশ্লিষ্ট ইউনিয়নটি অবস্থিত সেই সহকারী জজ এবং যেক্ষেত্রে অনুরূপ এখতিয়ার সম্পন্ন একাধিক সহকারী জজ রহিয়াছেন সেই ক্ষেত্রে অনুরূপ কনিষ্ঠতম সহকারী জজ;

(ঙ) “গ্রাম আদালত” অর্থ ধারা ৫ এর অধীন গঠিত গ্রাম আদালত;

(চ) “চেয়ারম্যান” অর্থ গ্রাম আদালতের চেয়ারম্যান;

(ছ) “তফসিল” অর্থ এই আইনের তফসিল;

(জ) “দণ্ডবিধি” অর্থ Penal Code, 1860 (Act No. XL V of 1860);

(ঝ) “দেওয়ানী কার্যবিধি” অর্থ Code of Civil Procedure, 1908 (Act No. V of 1908);

(ঞ) “দেওয়ানী মামলা” অর্থ তফসিলের দ্বিতীয় অংশে বর্ণিত বিষয়াবলীর সহিত সম্পর্কিত কোন মামলা;

(ট) “নির্ধারিত” অর্থ বিধি দ্বারা নির্ধারিত;

(ঠ) “পক্ষ” অর্থে এমন কোন ব্যক্তি অন্তর্ভুক্ত হইবে, যাহার উপস্থিতি কোন বিবাদের সঠিক মীমাংসার জন্য প্রয়োজনীয় বলিয়া বিবেচিত হয়, এবং গ্রাম আদালত যাহাকে অনুরূপ বিবাদের একটি পক্ষ হিসাবে সংযুক্ত করে;

(ড) “ফৌজদারী কার্যবিধি” অর্থ Code of Criminal Procedure, 1898 (Act No. V of 1898);

(ঢ) “ফৌজদারী মামলা” অর্থ তফসিলের প্রথম অংশে বর্ণিত অপরাধ সমূহের সহিত সম্পর্কিত কোন মামলা;

(ন) “বিধি” অর্থ এই আইনের অধীন প্রণীত বিধি;

(প) “সিদ্ধান্ত” অর্থ গ্রাম আদালতের কোন সিদ্ধান্ত।

(ফ) “তামাদি আইন” অর্থ Limitation Act, 1908 (Act No. IX of 1908)।”

৩। ২০০৬ সনের ১৯ নং আইনের ৩ ধারার সংশোধন।-২০০৬ সনের ১৯ নং আইনের ৩ ধারার (২) উপ-ধারার “গ্রাম আদালত কর্তৃক তফসিলের প্রথম অংশে বর্ণিত কোন অপরাধের সহিত কোন মামলা বিচার্য হইবে না যদি উক্ত মামলায় আমলযোগ্য কোন অপরাধের দায়ে কোন ব্যক্তি দোষী সাব্যস্ত হইয়া ইতোপূর্বে গ্রাম আদালত কর্তৃক দণ্ড প্রাপ্ত হইয়া থাকেন” শব্দগুলির পরিবর্তে “গ্রাম আদালতে কোন ফৌজদারী মামলা বিচার্য হইবে না, যদি ঐ মামলার অভিযুক্ত ব্যক্তি পূর্বে কোন সময়ে কোন আমলযোগ্য অপরাধে যে কোন আদালত কর্তৃক দোষী সাব্যস্ত হইয়া থাকেন” শব্দগুলিও কমা প্রতিস্থাপিত হইবে।

৪। ২০০৬ সনের ১৯ নং আইনের ৪ ধারার সংশোধন।- ২০০৬ সনের ১৯ নং আইনের ৪ ধারার (২) উপ-ধারার পর নিম্নলিখিত উপ-ধারা সন্নিবেশিত হইবে, যথাঃ-

“(৩) সংশ্লিষ্ট সহকারী জজ রিভিশনটি দায়েরের ত্রিশ (৩০) দিনের মধ্যে নিষ্পত্তি করিবেন।”।

৫। ২০০৬ সনের ১৯ নং আইনের ৫ ধারার সংশোধন।- ২০০৬ সনের ১৯ নং আইনের ৫ ধারার(১) ও (৫) উপ-ধারার পরিবর্তে নিম্নরূপ উপ-ধারাগুলি প্রতিস্থাপিত হইবে, যথাঃ-

“(১) একজন চেয়ারম্যান এবং উভয়পক্ষ কর্তৃক মনোনীত দুইজন করিয়া মোট চারজন সদস্য লইয়া গ্রাম আদালত গঠিত হইবে; তবে শর্ত থাকে যে, প্রত্যেক পক্ষ কর্তৃক মনোনীত দুইজন সদস্যের মধ্যে একজন সদস্যকে সংশ্লিষ্ট ইউনিয়ন পরিষদের সদস্য হইতে হইবে:

আরো শর্ত থাকে যে, মামলার কোন পক্ষে নারী বা শিশুর স্বার্থ থাকিলে ঐ পক্ষ কর্তৃক মনোনীত দুইজন সদস্যের মধ্যে একজন সদস্য হইবেন নারী।

(৫) এই আইনে বা অন্যকোন আইনে যাহা কিছুই থাকুক না কেন, নির্ধারিত সময়ের মধ্যে-

(ক) আবেদনকারী সদস্য মনোনীত করিতে না পারিলে সংশ্লিষ্ট চেয়ারম্যান লিখিতভাবে এরূপ ব্যর্থতার কারণ উল্লেখ করিয়া আবেদনটি আবেদনকারীর নিকট ফেরৎ দিবেন;

(খ)প্রতিবাদী সদস্য মনোনীত করিতে না পারিলে সংশ্লিষ্ট চেয়ারম্যান, বিরোধীয় বিষয়ে উপযুক্ত আদালতে মামলা করিতে পারিবেন মর্মে নির্ধারিত পদ্ধতিতে আবেদনকারীকে সনদ প্রদান করিয়া আবেদনটি তাহার নিকট ফেরৎ দিবেন।”

৬। ২০০৬ সনের ১৯ নং আইনের ৭ ধারার সংশোধন।- ২০০৬ সনের ১৯ নং আইনের ৭ ধারার উপ-ধারা (১) এর “পঁচিশ হাজার” শব্দদ্বয়ের পরিবর্তে “পঞ্চাশ হাজার” শব্দ দ্বয় প্রতিস্থাপিত হইবে।

৭। ২০০৬ সনের ১৯ নং আইনে ৭ক ও ৭ খ ধারার সন্নিবেশ।- ২০০৬ সনের ১৯ নং আইনের ৭ ধারার পর নিম্নরূপ নতুন ৭ক ও ৭খ ধারাদ্বয় সন্নিবেশিত হইবে, যথাঃ-

“৭ক। মধ্যস্থতা, ইত্যাদি।-(১)ধারা ৫ এর অধীন গ্রাম আদালত গঠিত হইবার সর্বোচ্চ ১৫ (পনের) দিনের মধ্যে গ্রাম আদালতের প্রথম অধিবেশন অনুষ্ঠিত হইবে এবং ঐ অধিবেশনে গ্রাম আদালত উভয় পক্ষকে মধ্যস্থতা অথবা বিচারিক কার্যক্রমের মাধ্যমে মামলা নিষ্পত্তির পদ্ধতিদ্বয়ের মধ্যে যে কোন একটি পদ্ধতি বাছাই করিবার প্রস্তাব করিবে এবং পক্ষগণ ঐ অধিবেশনেই মামলা নিষ্পত্তির পদ্ধতি লিখিতভাবে বাছাই করিবেন।

(২) উভয়পক্ষ মধ্যস্থতার মাধ্যমে মামলা নিষ্পত্তির পদ্ধতি বাছাই করিলে ঐ অধিবেশনে অথবা ইহার পরবর্তী ৭ (সাত) দিনের মধ্যে উভয়পক্ষের লিখিত সম্মতির ভিত্তিতে গ্রাম আদালত সংশ্লিষ্ট ইউনিয়নের সর্বোচ্চ ৫ (পাঁচ) ব্যক্তিকে মামলার মধ্যস্থতাকারী নিযুক্ত করিবে।

(৩) উপ-ধারা (২) এর অধীন নিযুক্ত মধ্যস্থতাকারী অথবা মধ্যস্থতাকারীগণ মধ্যস্থতা কার্যক্রমের স্থান, তারিখও সময় নির্ধারণ করিবেন ও উভয়পক্ষকে অবহিত করিবেন।

(৪) এ ধারার অধীন মধ্যস্থতা কার্যক্রম গোপনীয় অথবা প্রকাশ্য হইবে যাহা মামলার প্রকৃতি বিবেচনা করিয়া পক্ষগণ এবং মধ্যস্থতাকারীগণ নির্ধারণ করিবেন এবং পক্ষগণ, তাহাদের নিযুক্ত প্রতিনিধি এবং মধ্যস্থতাকারীর মধ্যে অনুষ্ঠিত কোন আলোচনা বা পরামর্শ, উপস্থাপিত কোন সাক্ষ্য, প্রদত্ত কোন স্বীকৃতি, বিবৃতি বা মন্তব্য পরবর্তীতে অন্য কোন আদালতে অনুষ্ঠিত সংশ্লিষ্ট বিরোধীয় বিষয় সম্পর্কিত কোন মামলার শুনানীর কোন পর্যায়ে বা অন্য কোন কার্যক্রমে উহাদের উল্লেখ করা যাইবে না বা সাক্ষ্য হিসাবে উহারা গ্রহণযোগ্য হইবে না।

(৫) উপ-ধারা (১) এর অধীন উভয়পক্ষ মধ্যস্থতার মাধ্যমে মামলা নিষ্পত্তির পদ্ধতি বাছাই করিলে মধ্যস্থতাকারী অথবা মধ্যস্থতাকারীগণ ১৫ (পনের) দিনের মধ্যে মধ্যস্থতার কার্যক্রম সম্পন্ন করিবেন যাহা উভয় পক্ষের সম্মতিতে ১৫ (পনের)দিন পর্যন্ত বৃদ্ধি করা যাইবে।

(৬) উপ-ধারা (৫) এ নির্ধারিত মেয়াদের মধ্যে মধ্যস্থতার মাধ্যমে বিরোধ মীমাংসিত হইলে মীমাংসার শর্তাদি উল্লেখপূর্বক উভয়পক্ষ যৌথভাবে একটি আপোষনামা গ্রাম আদালতের নিকট দাখিল করিবে যাহাতে সম্পাদনকারী হিসাবে উভয়পক্ষের স্বাক্ষর ,

কিংবা ক্ষেত্রমত, বাম হস্তের বৃদ্ধাঙ্গুলির ছাপ এবং সাক্ষী হিসাবে মধ্যস্থতাকারী এবং মধ্যস্থতায় উপস্থিত ছিলেন এমন কোন ব্যক্তির স্বাক্ষর থাকিতে হইবে।

(৭) উপ-ধারা (৬) অনুযায়ী দাখিলকৃত আপোষনামা তফসিলের তৃতীয় অংশে বর্ণিত ফরম অনুযায়ী প্রদত্ত গ্রাম আদালতের আদেশ বা ডিক্রী বলিয়া গণ্য হইবে।

(৮) এই ধারার অধীন মধ্যস্থতা পদ্ধতি অনুসরণে নিষ্পত্তিকৃত মামলার ডিক্রী বা আদেশের বিরুদ্ধে উচ্চতর আদালতে কোন আপীল বা রিভিশন দায়ের করা যাইবে না।

(৯) উভয়পক্ষ মধ্যস্থতার মাধ্যমে মামলা নিষ্পত্তির পদ্ধতি বাছাই করিতে সম্মত না হইলে বা মামলার যে কোন পক্ষ বা উভয়পক্ষ বিচারিক কার্যক্রমের মাধ্যমে মামলা নিষ্পত্তির পদ্ধতি বাছাই করিলে মামলাটি নির্ধারিত পদ্ধতিতে বিচারিক কার্যক্রমের মাধ্যমে নিষ্পত্তি করিতে হইবে।

(১০) উপ-ধারা (৫) এ নির্ধারিত মেয়াদের মধ্যে পক্ষগণ তাহাদের বাছাইকৃত মধ্যস্থতা পদ্ধতির মাধ্যমে মামলা নিষ্পত্তি করিতে না পারিলে সেইক্ষেত্রে গ্রাম আদালত ভঙ্গিয়া যাইবে।

(১১) এই আইনে বা অন্যকোন আইনে যাহা কিছুই থাকুক না কেন, উপ-ধারা (১০) এর অধীন গ্রাম আদালত ভঙ্গিয়া গেলে বিরোধের যে কোন পক্ষ গ্রাম আদালত ভঙ্গিয়া যাইবার ৬০ (ষাট) দিনের মধ্যে তফসিলের প্রথম অংশে বর্ণিত বিষয়াবলী সম্পর্কিত ফৌজদারী মামলার ক্ষেত্রে এখতিয়ার সম্পন্ন ফৌজদারী আদালতে এবং দেওয়ানী মামলার ক্ষেত্রে এখতিয়ার সম্পন্ন দেওয়ানী আদালতে বিরোধীয় বিষয়ে মামলা দায়ের করিতে পারিবে।”

“ ৭ খ। বিচারিক পদ্ধতিতে মামলা নিষ্পত্তির মেয়াদ।- (১) ধারা ৭ ক এর অধীন বিচারিক কার্যক্রমের পদ্ধতিতে মামলা নিষ্পত্তির শুরু হইতে সর্বোচ্চ ৯০ (নব্বই) দিনের মধ্যে সংশ্লিষ্ট গ্রাম আদালত মামলাটি নিষ্পত্তি করিবে যাহা আরো ৩০ (ত্রিশ) দিন বৃদ্ধি করা যাইবে।

(২) উপধারা (১) এ উল্লিখিত মেয়াদের মধ্যে মামলা নিষ্পত্তি না হইলে ঐ মেয়াদান্তে সংশ্লিষ্ট গ্রাম আদালত ভঙ্গিয়া যাইবে।

(৩) এই আইনে বা অন্যকোন আইনে যাহা কিছুই থাকুক না কেন, উপ-ধারা (২) এর অধীন গ্রাম আদালত ভঙ্গিয়া গেলে বিরোধের যে কোন পক্ষ গ্রাম আদালত ভঙ্গিয়া যাইবার ৬০ (ষাট) দিনের মধ্যে ফৌজদারী মামলার ক্ষেত্রে এখতিয়ার সম্পন্ন প্রথম শ্রেণীর ম্যাজিস্ট্রেট আদালতে এবং তফসিলের দ্বিতীয় অংশে বর্ণিত বিষয়াবলী সম্পর্কিত দেওয়ানী মামলার ক্ষেত্রে এখতিয়ার সম্পন্ন সহকারী জজ আদালতে বিরোধীয় বিষয়ে মামলা দায়ের করিতে পারিবে।”

৮। ২০০৬ সনের ১৯ নং আইনের ৮ ধারার সংশোধন।- ২০০৬ সনের ১৯ নং আইনের ৮ ধারার-

(ক) উপ-ধারা (১) এর পর নিম্নরূপ নতুন উপ-ধারা সন্নিবেশিত হইবে, যথাঃ

“(১ক) চারজন সদস্যের উপস্থিতিতে উভয় পক্ষে দুই-দুই (২৪২) ভোটের কারণে কোন মামলার সিদ্ধান্ত গ্রহণে অচলাবস্থা দেখা দিলে চেয়ারম্যান একটি নির্ধারণী ভোট প্রদান করিবেন এবং ইহার মাধ্যমে ঐ মামলায় গ্রাম আদালতের সিদ্ধান্ত গৃহীত হইবে।”

(খ) উপ-ধারা (২) এ “সংখ্যাগরিষ্ঠ ভোটে” শব্দগুলির পর “ অথবা উপ-ধারা (১ক) এর বিধান অনুযায়ী” শব্দগুলি, সংখ্যা ও বন্ধনীসমূহ প্রতিস্থাপিত হইবে।

৯। ২০০৬ সনের ১৯ নং আইনের ৯ ধারার সংশোধন।- ২০০৬ সনের ১৯ নং আইনের ৯ ধারার উপ-ধারা ৩এ “Public Demands Recovery Act, 1913 (Act No.III of 1913)” শব্দগুলি, কমা, সংখ্যা ও বন্ধনীগুলির পরিবর্তে “ স্থানীয় সরকার (ইউনিয়ন পরিষদ) আইন, ২০০৯ (২০০৯ সনের ৬১ নং আইন)” শব্দগুলি, কমা, সংখ্যা ও বন্ধনীগুলি প্রতিস্থাপিত হইবে।

১০। ২০০৬ সনের ১৯ নং আইনের ১৩ ধারার সংশোধন।- ২০০৬ সনের ১৯ নং আইনের ১৩ ধারার-

(ক) উপ-ধারা (১) এর পরিবর্তে নিম্নরূপ উপ-ধারা (১) প্রতিস্থাপিত হইবে, যথাঃ-

“(১) এই আইনে ভিন্নরূপ কোন বিধান না থাকিলে, Evidence Act, 1872 (Act No.I of 1872) ও ফৌজদারী কার্যবিধির কোন বিধানাবলী গ্রাম আদালতে আনীত মামলায় প্রযোজ্য হইবে না এবং দেওয়ানী কার্যবিধির ধারা ১০ ও ১১ এর বিধানাবলী ছাড়া অন্য কোন বিধানাবলী গ্রাম আদালতে আনীত মামলায় প্রযোজ্য হইবে না।”;

(খ) উপ-ধারা (৩) এর “এই আইনের” শব্দগুলির পর “ তফসিলের প্রথম অংশের” শব্দগুলি সন্নিবেশিত হইবে।

১১। ২০০৬ সনের ১৯ নং আইনে ১৩ ক ধারার সন্নিবেশ।- ২০০৬ সনের ১৯ নং আইনের ১৩ ধারার পর নিম্নরূপ নতুন ১৩ক ধারা সন্নিবেশিত হইবে, যথাঃ-

“১৩ক। মামলা দায়েরের সময়সীমা।-(১) তামাদি আইনে যাহা কিছুই থাকুক না কেন তফসিলের প্রথম অংশে বর্ণিত বিষয়াবলী সম্পর্কিত ফৌজদারী মামলা দায়েরের ক্ষেত্রে অপরাধ সংঘটিত হইবার ৩০ (ত্রিশ) দিনের মধ্যে সংশ্লিষ্ট ইউনিয়ন পরিষদ চেয়ারম্যানের নিকট আবেদন করিতে হইবে।

(২) তামাদি আইনে যাহা কিছুই থাকুক না কেন তফসিলের দ্বিতীয় অংশে বর্ণিত বিষয়াবলী সম্পর্কিত দেওয়ানী মামলা দায়েরের ক্ষেত্রে মামলার কারণ উদ্ভব হইবার ৬০ (ষাট) দিনের মধ্যে সংশ্লিষ্ট ইউনিয়ন পরিষদ চেয়ারম্যানের নিকট আবেদন করিতে হইবে।”

১২। ২০০৬ সনের ১৯ নং আইনের ১৬ ধারার সংশোধন।- ২০০৬ সনের ১৯ নং আইনের ১৬ ধারার-

(ক) উপ-ধারা (১) এ “জেলা ম্যাজিস্ট্রেট” শব্দগুলির পরিবর্তে “চীফ জুডিসিয়াল ম্যাজিস্ট্রেট” শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (১) এর পর নিম্নরূপ উপ-ধারা সন্নিবেশিত হইবে, যথাঃ-

“(১ক) যে ক্ষেত্রে জেলা জজ মনে করেন যে, তফসিলের দ্বিতীয় অংশের বর্ণিত বিষয়াবলী সম্পর্কিত গ্রাম আদালতে বিচারাধীন কোন

মামলার পরিস্থিতি এইরূপ যে জনস্বার্থে ও ন্যায়বিচারের স্বার্থে কোন দেওয়ানী আদালতে উহার বিচার হওয়া উচিত, সেই ক্ষেত্রে, এই আইনে যাহা বলা হইয়াছে তাহা সত্ত্বেও, তিনি গ্রাম আদালত হইতে উক্ত মামলা প্রত্যাহার করিতে এবং বিচার ও নিষ্পত্তির জন্য উহা দেওয়ানী আদালতে প্রেরণের নির্দেশ দিতে পারিবেন।”

১২। ২০০৬ সনের ১৯ নং আইনের ১৭ ধারার সংশোধন।- ২০০৬ সনের ১৯ নং আইনের ১৭ ধারার পরিবর্তে নিম্নরূপ ধারা প্রতিস্থাপিত হইবে, যথাঃ-

“১৭। পুলিশ কর্তৃক তদন্ত, ইত্যাদি।- (১) এই আইনে বা অন্যকোন আইনে যাহা কিছুই থাকুক না কেন, এই আইনের তফসিলের প্রথম অংশে বর্ণিত কোন অপরাধ পুলিশ কর্তৃক তদন্তের ক্ষেত্রে সংশ্লিষ্ট প্রথম শ্রেণীর ম্যাজিস্ট্রেটের অনুমতি গ্রহন করিতে হইবে। (২) যদি কোন ফৌজদারী আদালতে এই আইনের প্রথম অংশে বর্ণিত কোন মামলা আনীত হয় তাহা হইলে, উক্ত আদালত উপযুক্ত মনে করিলে, মামলাটি সংশ্লিষ্ট ইউনিয়ন পরিষদে প্রেরণ করিয়া এই আইনের বিধান মোতাবেক বিচারের নির্দেশ দিতে পারিবে।”

১৩। ২০০৬ সনের ১৯ নং আইনের তফসিলের সংশোধন।- ২০০৬ সনের ১৯ নং আইনের বিদ্যমান তফসিলের পরিবর্তে নিম্নরূপ নতুন তফসিল প্রতিস্থাপিত হইবে, যথাঃ-

### “তফসিল

প্রথম অংশ : ফৌজদারী মামলাসমূহ

ক। দণ্ডবিধির নিম্নলিখিত ধারা সমূহের অধীন সংঘটিত অপরাধ-

১৬০। **কলহ বা মারামারির শাস্তি।**- কেহ কলহ বা মারামারির অপরাধ সংঘটন করিলে তজ্জন্য সে এক মাস পর্যন্ত যে কোন মেয়াদের সশ্রম বা বিনাশ্রম কারাদণ্ডে কিংবা একশত টাকা পর্যন্ত যে কোন পরিমাণ অর্থদণ্ডে কিংবা উভয় দণ্ডে দণ্ডনীয় হইবে।

৩২৩। **স্বেচ্ছায় আঘাত করিবার শাস্তি।**- যদি কেহ ৩৩৪ ধারায় বর্ণিত ক্ষেত্র ব্যতীত স্বেচ্ছায় কাহাকেও আঘাত করে, তাহা হইলে উক্ত ব্যক্তি এক বৎসর পর্যন্ত যে কোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদণ্ডে, কিংবা এক হাজার টাকা পর্যন্ত যে কোন পরিমাণ অর্থদণ্ডে, কিংবা উভয় দণ্ডেই দণ্ডনীয় হইবে।

৩৩৪। **প্ররোচনার ফলে ইচ্ছাপূর্বক আঘাত করা।**- যদি মারাত্মক ও আকস্মিক প্ররোচনায় প্ররোচিত হইয়া কেহ ইচ্ছাপূর্বক কাহাকেও আঘাত করেন, যদি যে ব্যক্তি প্ররোচনা দিয়াছে তাহাকে ছাড়া অন্য কোন ব্যক্তিকে আঘাত করিবার ইচ্ছা পোষণ না করিয়া থাকে, বা যে ব্যক্তি প্ররোচনা দিয়াছে সেই ব্যক্তি ছাড়া অন্য কাহারও প্রতি আঘাত হইতে পারে বলিয়া তাহার জানা না থাকে- তাহা হইলে আঘাতকারী একমাস পর্যন্ত যেকোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদণ্ডে কিংবা পাঁচশত টাকা পর্যন্ত যেকোন পরিমাণ অর্থদণ্ডে কিংবা উভয় দণ্ডে দণ্ডনীয় হইবে।

৩৪১। **অন্যায় বাধাগ্রস্ত করার শাস্তি।**- যদি কেহ কোন ব্যক্তিকে অন্যায়ভাবে বাধাগ্রস্ত করে, তাহা হইলে সে একমাস পর্যন্ত যেকোন মেয়াদের বিনাশ্রম কারাদণ্ডে, কিংবা পাঁচশত টাকা পর্যন্ত যেকোন পরিমাণ অর্থদণ্ডে কিংবা উভয় দণ্ডে দণ্ডনীয় হইবে।

৩৪২। **অন্যায় আটকের শাস্তি।**- যদি কোন ব্যক্তি কাহাকেও আটক রাখে, তাহা হইলে সে এক বৎসর পর্যন্ত যেকোন মেয়াদের সশ্রম বা বিনাশ্রম কারাদণ্ডে কিংবা একহাজার টাকা পর্যন্ত যেকোন পরিমাণ অর্থদণ্ডে কিংবা উভয় দণ্ডে দণ্ডনীয় হইবেন।

৩৫২। **গুরুতর প্ররোচনা ব্যতীত আক্রমণ কিংবা অপরাধজনক বলপ্রয়োগের শাস্তি।**- মারাত্মক ও আকস্মিক প্ররোচনা ব্যতীত যদি কেহ কাহাকেও আঘাত করে বা তাহার উপর অপরাধজনক বল প্রয়োগ করে তাহা হইলে-

সে তিন মাস পর্যন্ত যেকোন মেয়াদের সশ্রম বা বিনাশ্রম কারাদণ্ডে কিংবা পাঁচশত টাকা পর্যন্ত যেকোন পরিমাণ অর্থদণ্ডে কিংবা উভয় দণ্ডে দণ্ডনীয় হইবে।

### ব্যাখ্যা

মারাত্মক আকস্মিক প্ররোচনা এই ধারা অনুসারে কোন অপরাধের জন্য বিহিত দণ্ড লাঘব করিবে না যদি-

প্ররোচনাটি অপরাধী অজুহাত স্বরূপ স্বয়ং কামনা করিয়া থাকে বা স্বেচ্ছায় উহার উস্কানি দিয়া থাকে, কিংবা প্ররোচনাটি মান্য করিয়া অনুষ্ঠিত কোন কার্যের ফলে অথবা কোন সরকারী কর্মচারী কর্তৃক আইনানুসারে উক্ত সরকারী কর্মচারীর ক্ষমতা প্রয়োগ করিয়া অনুষ্ঠিত কোন কার্যের ফলে ঘটিয়া থাকে, কিংবা আত্মরক্ষার ব্যক্তিগত অধিকারের আইন সম্মত প্রয়োগ করিয়া কৃত কোন কার্যের ফলে প্ররোচনাটি ঘটিয়া থাকে।

প্ররোচনাটি এমন মারাত্মক ও আকস্মিক ছিল কিনা যাহার ফলে দণ্ড লাঘব হইতে পারে, তাহা ঘটনাগত প্রশ্ন।

৩৫৮। **মারাত্মক প্ররোচনার ফলে আক্রমণ করা কিংবা অপরাধজনক বলপ্রয়োগ করা।**- যদি কোন ব্যক্তি অপর কোন ব্যক্তির মারাত্মক আকস্মিক প্ররোচনায় ক্ষিপ্ত হইয়া সেই ব্যক্তিকে আঘাত করে কিংবা তাহার উপর অপরাধজনকভাবে বলপ্রয়োগ করে, তাহা হইলে-

তিনি এক মাস পর্যন্ত যেকোন মেয়াদের সশ্রম বা বিনাশ্রম কারাদণ্ডে কিংবা দুইশত টাকা পর্যন্ত যেকোন পরিমাণ অর্থদণ্ডে কিংবা উভয় দণ্ডে দণ্ডনীয় হইবেন।

ব্যাখ্যাঃ উপরের ধারাটি ৩৫২ ধারার অনুরূপ ব্যাখ্যা সাপেক্ষ।

৪২৬। **ক্ষতি সাধনের শাস্তি।**- যদি কোন ব্যক্তি কাহারো ক্ষতি সাধন করে, তাহা হইলে উক্ত ব্যক্তি তিন মাস পর্যন্ত যে কোন মেয়াদে সশ্রম



বা বিনাশ্রম কারাদন্ডে কিংবা অর্থদন্ডে বা উভয় দন্ডেই দন্ডনীয় হইবে।

৪৪৭। অপরাধমূলক অনধিকার প্রবেশের শাস্তি।- যদি কেহ অনধিকার প্রবেশ করে, তাহা হইলে উক্ত ব্যক্তি তিন মাস পর্যন্ত যেকোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদন্ডে, কিংবা পাঁচশত টাকা পর্যন্ত যেকোন পরিমাণ অর্থদন্ডে কিংবা উভয় দন্ডেই দন্ডনীয় হইবে।

৪৪৮। গৃহে অনধিকার প্রবেশের শাস্তি।- যদি কোন ব্যক্তি গৃহে অনধিকার প্রবেশ করে তাহা হইলে সেই ব্যক্তি এক বৎসর পর্যন্ত যে কোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদন্ডে, কিংবা এক হাজার টাকা পর্যন্ত যে কোন পরিমাণ অর্থদন্ডে, কিংবা উভয় দন্ডেই দন্ডিত হইবে।

৫০৪। শান্তিভঙ্গের উদ্দেশ্যে ইচ্ছাকৃতভাবে প্ররোচনা বা অপমান করা।- যদি কোন ব্যক্তি ইচ্ছাকৃতভাবে অপর কোন ব্যক্তিকে অপমান করে এবং তদ্বারা তাহাকে প্ররোচনা দান করে এবং অনুরূপ প্ররোচনার ফলে যাহাতে সেই ব্যক্তি শান্তিভঙ্গ বা অন্য কোন অপরাধ করে, তদুদ্দেশ্যে অথবা অনুরূপ প্ররোচনার ফলে সেই ব্যক্তি শান্তিভঙ্গ করিতে পারে বা অন্য কোন অপরাধ করিতে পারে বলিয়া জানা সত্ত্বেও যদি তাহা করে তাহা হইলে-

সেই ব্যক্তি দুই বৎসর পর্যন্ত যেকোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদন্ডে কিংবা অর্থদন্ডে কিংবা উভয় দন্ডে দন্ডনীয় হইবে।

৫০৬। অপরাধজনক ভীতি প্রদর্শনের শাস্তি(প্রথম অংশ)।- যদি কোন ব্যক্তি অপরাধজনক ভীতিপ্রদর্শন করেন, তাহা হইলে-

সেই ব্যক্তি দুই বৎসর পর্যন্ত যে কোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদন্ডে কিংবা অর্থদন্ডে কিংবা উভয় দন্ডে দন্ডনীয় হইবে।

৫০৮। কোন ব্যক্তিকে বিধাতার বিরাগভাজন হইবে এইরূপ বিশ্বাস জন্মাইয়া কোন কাজ করানোর শাস্তি।- যদি কোন ব্যক্তি কাহাকেও এরূপ বিশ্বাস করায় যে, সে যে কার্যটি করিতে আইনতঃ বাধ্য নয়, সে কার্যটি যদি সে না করে, কিংবা যে কার্য করিতে আইনতঃ বাধ্য সে কার্যটি করা হইতে বিরত হয়, তাহা হইলে প্রথমোক্ত ব্যক্তি স্বীয় কোন কার্য দ্বারা তাহাকে বা যাহার সহিত স্বার্থসংশ্লিষ্ট, এমন অন্য কাহাকেও বিধাতার রোযানলে পতিত হইবে এবং ইচ্ছাপূর্বক এইরূপ বিশ্বাস সৃষ্টি করিয়া তাহাকে দিয়া উদ্দিষ্ট কার্যটি করায় বা করা হইতে বিরত রাখে কিংবা করাইবার, বা করা হইতে বিরত রাখিবার চেষ্টা করে, তাহা হইলে-

সেই ব্যক্তি এক বৎসর পর্যন্ত যেকোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদন্ডে কিংবা অর্থদন্ডে কিংবা উভয় দন্ডে দন্ডনীয় হইবে।

৫০৯। কোন নারীর শ্রীলতাহানির উদ্দেশ্যে কথা, অঙ্গভঙ্গী বা কোন কাজ করার শাস্তি।- যদি কোন ব্যক্তি কোন নারীর শ্রীলতাহানির উদ্দেশ্যে শুনিতে পায় এমনভাবে কোন কথা বলেন বা শব্দ করেন কিংবা সেই নারী যাহাতে দেখিতে পায় এমনভাবে কোন অঙ্গভঙ্গী করে বা কোন বস্তু প্রদর্শন করে, কিংবা অনুরূপ নারীর গোপনীয়তা লংঘন করে, তাহা হইলে-

সেই ব্যক্তি এক বৎসর পর্যন্ত যেকোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদন্ডে কিংবা অর্থদন্ডে কিংবা উভয় দন্ডে দন্ডনীয় হইবে।

৫১০। মাতাল ব্যক্তির প্রকাশ্যে অসদাচরণের শাস্তি।- যদি কোন ব্যক্তি নেশাগ্রস্ত অবস্থায় কোন প্রকাশ্য স্থানে গমন করে, বা কোন স্থানে অনধিকার প্রবেশ করে এবং এমন আচরণ করে, যাহার ফলে কাহারও বিরক্তি ঘটে, তাহা হইলে-

সেই ব্যক্তি চব্বিশ ঘণ্টা পর্যন্ত যেকোন মেয়াদে বিনাশ্রম কারাদন্ডে কিংবা দশ টাকা পর্যন্ত যেকোন পরিমাণ অর্থদন্ডে কিংবা উভয় দন্ডে দন্ডনীয় হইবে।

খ। দন্ডবিধির নিম্নলিখিত ধারা সমূহের অধীন সংঘটিত অপরাধটি গবাদিপশু সংক্রান্ত হয় এবং গবাদিপশুর মূল্য অনধিক পঞ্চাশ হাজার টাকা হয় অথবা সংঘটিত অপরাধটি গবাদিপশু ছাড়া অন্য কোন সম্পত্তি সংক্রান্ত হয় এবং উক্ত সম্পত্তির মূল্য অনধিক পঞ্চাশ হাজার টাকা হয়-

৩৭৯। চুরির শাস্তি।- যদি কোন ব্যক্তি চুরি করে, তাহা হইলে সেই ব্যক্তি তিন বৎসর পর্যন্ত যেকোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদন্ডে কিংবা অর্থদন্ডে কিংবা উভয় দন্ডে দন্ডনীয় হইবে।

৩৮০। বাসগৃহ ইত্যাদিতে চুরি।- যদি কোন ব্যক্তি কোন গৃহ, তাঁবু বা জলযানে চুরি করে, যে গৃহ, তাঁবু বা জলযানে মানুষের বাসস্থান হিসাবে ব্যবহৃত হয় কিংবা সম্পত্তি হেফাজতের জন্য ব্যবহৃত হয় তাহা হইলে-

সে সাত বৎসর পর্যন্ত যে কোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদন্ডে এবং অর্থদন্ডে দন্ডে দন্ডনীয় হইবে।

৩৮১। কর্মচারী বা চাকর কর্তৃক মালিকের দখলভুক্ত সম্পত্তি চুরির শাস্তি।- যদি কোন ব্যক্তি, কর্মচারী বা ভৃত্য হওয়া সত্ত্বেও, কিংবা কর্মচারী বা ভৃত্যের কাজে নিয়োজিত হওয়া সত্ত্বেও তাহার প্রভুর বা মালিকের দখলভুক্ত সম্পত্তি চুরি করে, তাহা হইলে-

সেই ব্যক্তি সাত বৎসর পর্যন্ত যেকোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদন্ডে এবং অর্থদন্ডে দন্ডে দন্ডনীয় হইবে।

গ। দন্ডবিধির নিম্নলিখিত ধারা সমূহের অধীন যখন কোন অপরাধ সংঘটিত হয় এবং অপরাধ সংশ্লিষ্ট অর্থের পরিমাণ অনধিক পঞ্চাশ হাজার টাকা হয়-

৪০৩। অসাধুভাবে সম্পত্তি তসরূপের শাস্তি।- যদি কোন ব্যক্তি অসাধুভাবে কোন অস্থাবর সম্পত্তি তসরূপ করে কিংবা উহা তাহার নিজের ব্যবহারে প্রয়োগ করে, তাহা হইলে-

সেই ব্যক্তি দুই বৎসর পর্যন্ত যেকোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদন্ডে কিংবা অর্থদন্ডে কিংবা উভয় দন্ডে দন্ডনীয় হইবে।

৪০৬। অপরাধজনক বিশ্বাসভঙ্গের শাস্তি।- যদি কোন ব্যক্তি অপরাধজনক বিশ্বাসভঙ্গ করে, তাহা হইলে-

সে তিন বৎসর পর্যন্ত যেকোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদণ্ডে এবং অর্থদণ্ডে দণ্ডে দণ্ডনীয় হইবে।

৪১৭। প্রতারণার শাস্তি।- যদি কোন ব্যক্তি প্রতারণা করে, তাহা হইলে সেই ব্যক্তি এক বৎসর পর্যন্ত যেকোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদণ্ডে এবং অর্থদণ্ডে কিংবা উভয় দণ্ডে দণ্ডনীয় হইবে।

৪২০। প্রতারণা ও অসাধুভাবে সম্পত্তি অর্পণ করিতে প্রবৃত্ত করার শাস্তি।- যদি কোন ব্যক্তি প্রতারণা করে এবং প্রতারণিত ব্যক্তিকে অসাধুভাবে অন্য কোন ব্যক্তিকে কোন সম্পত্তি প্রদানে প্রবৃত্ত করে, কিংবা অসাধুভাবে প্রতারণিত ব্যক্তিকে কোন মূল্যবান জামানতের সমুদয় বা অংশ বিশেষ প্রণয়ন, পরিবর্তন বা বিনাশসাধনে প্রবৃত্ত করে, কিংবা অসাধুভাবে প্রতারণিত ব্যক্তিকে জামানত হিসাবে রূপান্তরযোগ্য কোন স্বাক্ষরিত বা সীল- মোহরযুক্ত বস্তুর সমুদয় বা অংশ বিশেষ প্রণয়ন, পরিবর্তন বা বিনাশসাধনে প্রবৃত্ত করে তাহা হইলে-

সেই ব্যক্তি সাত বৎসর পর্যন্ত যেকোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদণ্ডে এবং অর্থদণ্ডেও দণ্ডনীয় হইবে।

ঘ। দণ্ডবিধির নিম্নলিখিত ধারার অধীন যখন কোন অপরাধ সংঘটিত হয় এবং অপরাধ সংশ্লিষ্ট অর্থের পরিমাণ অনধিক পঞ্চাশ হাজার টাকা হয়-

৪২৭। অনিষ্ট করিয়া পঞ্চাশ টাকা বা উহার অধিক ক্ষতিসাধনের শাস্তি।- যদি কোন ব্যক্তি অনিষ্ট সাধন করে এবং তদ্বারা পঞ্চাশ টাকা বা তদুর্দ্ধ পরিমাণ অর্থের ক্ষতি করে, তাহা হইলে সেই ব্যক্তি দুই বৎসর পর্যন্ত যেকোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদণ্ডে বা অর্থদণ্ডে উভয় দণ্ডে দণ্ডনীয় হইবে।

ঙ। দণ্ডবিধির নিম্নলিখিত ধারার অধীন যখন কোন অপরাধ সংঘটিত হয় এবং অপরাধ সংশ্লিষ্ট গবাদিপশুর মূল্য অনধিক পঞ্চাশ হাজার টাকা হয়-

#### ধারা-৪২৮

৪২৮। দশ টাকা বা তদুর্দ্ধ মূল্যের পশু হত্যা বা বিকলাঙ্গ করিয়া অনিষ্টসাধনের শাস্তি।- যদি কোন ব্যক্তি দশ টাকা বা তদুর্দ্ধ মূল্যের কোন একটি বা একাধিক পশু হত্যা করিয়া, বিষ প্রয়োগ করিয়া, বিকলাঙ্গ করিয়া বা অকেজো করিয়া অনিষ্ট সাধন করে, তাহা হইলে-

সে দুই বৎসর পর্যন্ত যেকোন মেয়াদে সশ্রম বা বিনাশ্রম কারাদণ্ড বা অর্থদণ্ডে, কিংবা উভয় দণ্ডে দণ্ডনীয় হইবে।

#### ধারা-৪২৯

৪২৯। যেকোন মূল্যের গবাদি পশু ইত্যাদি অথবা পঞ্চাশ টাকা মূল্যের যেকোন পশুকে হত্যা বা বিকলাঙ্গ করিয়া অনিষ্টসাধনের শাস্তি।- যদি কোন ব্যক্তি যেকোন মূল্যের হাতী, উট, ঘোড়া, খচ্চর, মহিষ ঘাঁট, গাভী বা গরু, কিংবা পঞ্চাশ টাকা বা তদুর্দ্ধ মূল্যের অন্য কোন পশুকে হত্যা করিয়া, বিষ প্রয়োগ করিয়া, বিকলাঙ্গ করিয়া বা অকেজো করিয়া অনিষ্টসাধন করে, তাহা হইলে-

সেই ব্যক্তি পাঁচ বৎসর পর্যন্ত যেকোন মেয়াদের সশ্রম বা বিনাশ্রম কারাদণ্ড বা অর্থদণ্ডে কিংবা উভয় দণ্ডেই দণ্ডনীয় হইবে।

চ। উপরিউক্ত যে কোন অপরাধ সংঘটনের চেষ্টা বা উহা সংঘটনের সহায়তা প্রদান।

#### দ্বিতীয় অংশঃ দেওয়ানী মামলাসমূহ

১। কোন চুক্তি, রশিদ বা অন্য কোন দলিল মূল্যে প্রাপ্য অর্থ আদায়ের জন্য মামলা।	যখন দাবীকৃত অর্থের পরিমাণ অথবা অস্থাবর সম্পত্তির মূল্য অথবা অপরাধ সংশ্লিষ্ট স্থাবর সম্পত্তির মূল্য অনধিক পঞ্চাশ হাজার টাকা হয়।
২। কোন অস্থাবর সম্পত্তি পুনরুদ্ধার বা উহার মূল্য আদায়ের জন্য মামলা।	
৩। স্থাবর সম্পত্তি বেদখল হওয়ার এক বৎসরের মধ্যে উহার দখল পুনরুদ্ধারের মামলা।	
৪। কোন অস্থাবর সম্পত্তির জবর দখল বা ক্ষতি করার জন্য ক্ষতিপূরণ আদায়ের জন্য মামলা।	
৫। গবাদিপশু অনাধিকার প্রবেশের কারণে ক্ষতিপূরণ মামলা।	
৬। কৃষি শ্রমিকদের পরিশোধ্য মজুরী ক্ষতিপূরণ আদায়ের মামলা।	

তৃতীয় অংশ  
[৭ ক ধারা দ্রষ্টব্য]  
আপোষনামামূলে ডিক্রী বা আদেশের ফরম

.....ইউনিয়ন পরিষদের গ্রাম-আদালতে

নং ফরমের ..... নং মামলা-

..... আবেদনকারী।

বনাম

..... প্রতিবাদী।

..... এর দাবী।

অদ্য মামলার উভয় পক্ষ ৭ক ধারার বিধানমতে আপোষনামা দাখিল করিয়াছে যাহা সর্বসম্মতিক্রমে গৃহীত হইল এবং আপোষনামাটি ডিক্রী হিসাবে গণ্য হইল।

তাং.....।

সীলমোহর.....

.....  
গ্রাম আদালতের

চেয়ারম্যানের স্বাক্ষর।

গ্রাম আদালতের সদস্যদের স্বাক্ষর:

১।

২।

৩।

৪।

১৪। বিচারাধীন মামলাসমূহ।- যে সকল মামলা এই আইন বলবত হইবার অব্যবহিত পূর্বে গ্রাম আদালতে, কোন দেওয়ানী বা ফৌজদারী আদালতে বিচারাধীন রহিয়াছে উহাদের উপর এই আইন প্রযোজ্য হইবে না, এবং অনুরূপ মামলা অনুরূপ আদালত কর্তৃক এইরূপ নিষ্পত্তি করা হইবে যেন এই আইন প্রণীত হয় নাই।

## Annexure –E

### Bibliography

#### Legislations of Bangladesh Jurisdiction

1. The Village Courts Act, 2006 (Act no. IXX of 2006)- Bangladesh Code;
2. The Penal Code, 1860(Act no. XLV of 1860)-Bangladesh Code
3. The Cattle-Trespass Act, 1871 (Act no. 1 of 1871) –Bangladesh Code
4. The Oaths Act, 1873 (Act no. x of 1873)-Bangladesh Code
5. The Code of Civil Procedure, 1908-Bangladesh Code
6. The Local Government (Union Parishads) Act, 2009(Act no. LXI of 2009)-Bangladesh Code
7. The Code of Criminal Procedure, 1898 (Act no. V of 1898)-Bangladesh Code



- 
8. The Public Demands Recovery Act, 1913 (Act No. III of 1913)-Bangladesh Code
  9. The Agricultural Labour (Minimum Wages) Ordinance, 1984 (Ordinance No. XVII of 1984)-Bangladesh Code
  10. The Village Courts Rules, 1976-Bangladesh Gazette
  11. Constitution of the People's Republic of Bangladesh-Government Publication

#### **Books**

1. MLR on Village Courts- Published by the Mainstream Law Reports
2. Access to Justice through State-led Rural Justice System in Bangladesh: A Case Study in Kansat Union Parishad-By Zahidul Islam Biswas, Advocate, Bangladesh Supreme Court, Published by Research Initiative Bangladesh (RIB), July 2009.

#### **UNDP Publications**

1. Access to Justice Practice Note
2. Making the Law Work for Everyone-Vol. 1 –Report of the Commission on Legal Empowerment of the Poor and UNDP
3. Human Security in Bangladesh In Search of Justice and Dignity, September 2002

#### **Research Paper**

1. Empowerment and Retribution in Criminal and Restorative Justice, Charles Barton- *Journal of Professional Ethics*, Vol. 7, no.(3&4) (1999): 111 – 135. Available at: [http://www.voma.org/docs/barton\\_emp&re.pdf](http://www.voma.org/docs/barton_emp&re.pdf)- last visited on 9-03-2011;
2. Barton, Charles. 'Restorative Justice Empowerment' *Journal of Professional and Applied Ethics*, 2, no. 2 (2000). Available at: [http://www.voma.org/docs/barton\\_rje.pdf](http://www.voma.org/docs/barton_rje.pdf) last visited on 9-03-2011.
3. Non-state Justice Systems in Bangladesh and the Philippines; Paper prepared for the United Kingdom Department for International Development ; Stephen Golub  
Boalt Hall School of Law ; University of California at Berkeley ; January 2003
4. Evaluating Legal Empowerment: Problems of Analysis and Measurement by  
Sumaiya Khair; *Hague Journal on the Rule of Law*, 1: 33–37, 2009 © 2009 T.M.C.ASSER PRESS  
and Contributors.
5. Legal Empowerment Strategies in Bangladesh: *Empowering Women and Poor People through Legal Means*; Daphne Keevil Harrold; BRAC Research Report, December 2007.
6. Legal Empowerment for Women and Disadvantaged Groups: Mandaluyong City, Phil.: Asian Development Bank, 2009.
- 7.

#### **Legislation of other Jurisdiction**

1. The Gram Nayalayas Act, 2008 of India;
2. The Provincial Village Courts Act, 1996 of Papua New Guinea



## Activating Village Courts in Bangladesh Project

### Local Government Division

Ministry of Local Government, Rural Development and Cooperatives  
Government of the People's Republic of Bangladesh



*Empowered lives.  
Resilient nations.*